

No. 16,170 ✓

United States Court of Appeals
For the Ninth Circuit

GLADYS LAYCOCK,

Appellant,

vs.

FRANK J. KENNEY,

Appellee.

Appeal from the United States District Court
for the District of Oregon.

APPELLANT'S OPENING BRIEF.

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APPELLANT'S OPENING BRIEF.

STATEMENT DISCLOSING JURISDICTION.

Plaintiff is part owner of gold mining property in Oregon, deriving her title under a patent from the United States Government, which granted the mining premises together with all the rights, privileges, immunities and appurtenances thereunto belonging.

Defendant is the Special Agent in Charge, United States Secret Service, Treasury Department, responsible for the enforcement in Oregon of the Gold Regulations issued by the United States Treasury Department and responsible for investigations of alleged violations thereof, and for making arrests for such alleged violations thereof and for causing criminal

proceedings to be instituted thereunder through the Department of Justice.

Plaintiff seeks a declaratory judgment to invalidate the said regulations and a permanent injunction to prevent the enforcement of said regulations against her, and to prevent her arrest or prosecution for operating her mining property and selling the metal produced therefrom (gold) without a license, and to prevent the confiscation of her metal (gold) by the United States.

Plaintiff alleges such regulations to be in violation of the Constitution and the rights guaranteed to her by the Constitution of the United States.

The jurisdiction of the District Court exists under Article III, Sec. 2 of the Constitution and the Act of June 22, 1948. (See Chapter 646, 62 Stat., 930; 28 USCA Sec. 1331.)

Jurisdiction of this Court exists under Title 28 USCA Sec. 1291.

This case involves the validity of the Gold Regulations, a copy of which is attached as Appendix A hereto.

The authority for those regulations, as asserted by the regulations themselves, is the so-called Gold Reserve Act of 1934, 48 Stat., 337 (31 USCA 440 et seq.) and the Trading With the Enemy Act of October 6, 1947, 40 Stat., 415 (12 USCA 95a) and Executive Orders and regulations or delegations purporting to be issued under said statutes or either of them.

The Trading With the Enemy Act, which originally was confined to a time of war was amended on March 9, 1933 so as to apply "during any other period of national emergency declared by the President".

The sections of those two statutes which are asserted to be the basis for the regulations, which the plaintiff attacks, are as follows:

"(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(a) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency, or securities,
* * *."

USCA Title 12 Sec. 95a.

"On January 30, 1934, all right, title, and interest, and every claim of the Board of Governors of the Federal Reserve System, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are vested in the United States; and in payment therefor credits in equivalent amounts in dollars are established in the Treasury in the accounts authorized under section 467 of Title 12 * * *."

USCA Title 31 Sec. 441.

“The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of sections 315b, 405b, 408a, 408b, 440-446, 752, 754a, 754b, 767, 821, 822a, 822b, and 824 of this title and sections 213, 411-415, 417, and 467 of Title 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States.”

The executive order under which the President claimed to act is Order No. 6260 of August 28, 1933 as amended by orders of January 12, 1934 and of January 15, 1934; appears as a note beneath Sec. 95a of Title 12 USCA.

One section of the so-called “Gold Reserve Act” is as follows:

“With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, *at home* or abroad, with any direct ob-

ligations, coin or currency of the United States,* authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest; *any provision of law relating to the maintenance of parity*, or limiting the purposes for which any of such obligations, coin, or currency, may be issued, or requiring any such obligations to be offered as a popular loan or on a competitive basis, or to be offered or issued at not less than par, to the contrary notwithstanding. All gold so purchased shall be included as an asset of the general fund of the Treasury."

48 Stat., Sec. 341, USCA Title 12 Sec. 734.

Section 54.44 of the Regulations issued by the Treasury Department is as follows:

"Purchase Price. The mints shall pay for all gold purchased by them in accordance with this subpart \$35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. *This price may be changed by the Secretary of the Treasury* without notice other than by notice of such change mailed or telegraphed to the mints."

ABSTRACT OF THE CASE.

The complaint alleges:

(a) That plaintiff has heavily invested in and developed her mining claim containing gold, and has blocked out therein about 243,000 tons of ore;

*All italics herein supplied unless otherwise indicated.

(b) That Regulations prohibit the holding and processing of her product, gold, except under license, and that the Regulations and the form of license issued thereunder require and compel that the licensee sell all gold processed by her to the government or to persons authorized to receive said gold in exchange for paper currency of the nominal or face amount of \$35.00 for each ounce of gold;

(c) That the cost of mining and producing the quartz from her mine and processing it into gold, measured by and paid in such paper currency, exceeds the price at which the license requires such gold to be sold;

(d) That, therefore, the Regulations and the requirements of the license issued thereunder make it impossible for her to operate and produce gold at a profit and, therefore, compel that the property remain idle and unproductive and cause it to depreciate so as to become practically worthless; and that as a result of such idleness, the terminals, timbers, tracks, shoring, cribbing, machinery and other improvements are constantly deteriorating to the plaintiff's loss and further daily damage;

(e) That the present fair market value of gold is \$70.00 per ounce, and that such price would permit the plaintiff to make a profit out of operations of millions of dollars and would enhance the present resale value of her property to at least \$10,000,000.00;

(f) That under the Constitution of the United States there is no power in Congress or in any depart-

ment of the government to fix the price of gold, or to fix the price of any other metal;

(g) That no statute of the United States purports to set the price of gold or of any other metal, or to authorize any department of the government to do so;

(h) That setting the price of gold deprives the plaintiff of her property without due process of law in violation of the Fifth Amendment to the Constitution;

(i) That setting the price of gold in terms of paper currency by the Treasury Department and the requirement, as a condition of a license to produce gold, that such gold be delivered to the Treasury Department at such set price payable in paper currency, is beyond the constitutional power of the Federal Government, and deprives the plaintiff of her rights under the Constitution and of her livelihood from the operation of her property; and that it is, in fact, a confiscation of her metal;

(j) That the establishment of such set price of gold produced, which is below the cost of production, and the selling of such gold by the Treasury Department for industrial, professional or artistic use, at the same price, grants an unlawful benefit to such other users of gold at the expense of and to the damage of this plaintiff and other producers of gold, by permitting such other users of gold to obtain the metal for less than its cost of production and at the expense of the producers;

(k) That the defendant has threatened to cause plaintiff's arrest and prosecution involving criminal penalties, and has threatened confiscation of her gold and to cause fines to be imposed upon her if she should attempt to sell her gold at a fair price in the market in violation of such Regulations;

(l) That the enforcement of such invalid Regulations is causing this plaintiff an irreparable injury, and that she has no remedy at law;

(m) That all emergencies, war, economic or otherwise, pursuant to which any and all legislation with respect to gold ceased to exist prior to the commencement of this action, and that no such emergency now exists.

Upon those grounds the plaintiff prayed the Court to adjudge that setting the price of gold by the government is without any authority under the Constitution or under any law of the United States and is, therefore, invalid and void, and that the defendant be permanently enjoined from enforcing the provisions of the Regulations against her, and from enforcing any price for her gold, and from causing her to be arrested or prosecuted or fined for selling her gold without license and from causing her gold to be confiscated, and from interfering with her operation of her property or her marketing the gold produced therefrom for her own account.

The defendant moved to dismiss the complaint, which motion the District Court sustained on the ground that the complaint failed to state a claim upon which relief could be granted.

The brief findings of fact declared the substance of Sec. 821 of Title 31 USCA, which declares the dollar consisting of a specified weight of gold to be the standard unit of value, and which directs that all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, which makes it the duty of the Secretary of the Treasury to maintain such parity.

The Court also made the following finding of fact:

“Control of the entire domestic stock of existing gold and all additions thereto and subtractions therefrom, including the prevention of hoarding of old and newly-mined gold, are requisite to performance of the Secretary’s statutory duty ‘to maintain such parity’ ”. (Tr. p. 18.)

The conclusions of law declared that the Regulations were reasonably related to performance of the duty “to maintain such parity and the constitutional power to ‘regulate the value’ of money (sic) U.S. Constitution Article I Sec. 8”.

The judgment recited that for those reasons the complaint was dismissed upon the ground that it failed to state a claim upon which relief could be granted.

Following the entry of such judgment this appeal was timely perfected.

SPECIFICATIONS OF ERROR.

The District Court erred in the following respects:

(1) In dismissing the complaint upon the asserted ground that it failed to state a claim upon which relief could be granted;

(2) In failing to adjudge that the enforcement of the Regulations violates the rights of this plaintiff as guaranteed by the Constitution of the United States;

(3) In failing to hold that the Regulations are beyond the power of the government under the Constitution;

(4) In failing to hold that the Executive Orders and the Regulations are beyond and in excess of any power granted by the statutes under which such Executive Orders and Regulations purport to be issued;

(5) In failing to hold that under the Constitution the government has no power to set the price of gold;

(6) In failing to hold that neither the Trading With the Enemy Act nor the Gold Reserve Act give or attempt to give any officer of the government power to set the price of gold;

(7) In failing to hold that gold is a commodity and that gold produced from plaintiff's property is her private property, and in failing to hold that enforcement of the Regulations, including the setting of the price of gold, deprives this plaintiff of her private property without just compensation in violation of the Constitution;

(8) In failing to hold that the price setting provisions of said Regulations (a) constitute legislation

by the Executive Department of the government in violation of Article I Sec. 1 of the Constitution and (b) caused this plaintiff to be deprived of just compensation for her property and of the right to have such just compensation determined by a Court in violation of the due process clause of the Fifth Amendment to the Constitution of the United States, and in violation of Articles I and III, Sec. 1 of the Constitution;

(9) In holding that control of the entire domestic stock of existing gold and all additions thereto and subtractions therefrom are necessary to the duty to maintain the parity specified in Sec. 821 of Title 31 USCA;

(10) In holding that the Regulations and the restrictions thereby imposed upon the private occupation of gold mining are reasonably related to the duty to maintain such parity, and to the power granted by Sec. 8 of Article I of the Constitution, which power is expressed in the conclusions of law of the Court below to be the power to "regulate the value of money". In point of fact the power given by Sec. 8 of Article I is not the power to regulate the value of money but is confined to the power "to regulate the value of *coined money* and of foreign coin".

DEFINITION OF TERMS AND HISTORICAL BACKGROUND.

Although this complaint raises grave questions under the Constitution of the United States, the District Court did not specifically rule upon the ques-

tions raised by the complaint nor upon its allegations that the Regulations and Acts complained of are in excess of the power granted by the Constitution and violate the rights of this plaintiff, as guaranteed to her by the Constitution.

The transcript of the proceedings below, particularly the colloquies between Court and counsel, evidence: that the District Court was under the impression that Congress has power to "fix the value of money", but was also of the opinion that the government had no power to direct that a citizen could not convert his ore to gold bullion unless he first signed a contract by which he agreed to deliver such gold to the mint at \$35.00 an ounce. But the defendant urged that since Sec. 314 of Title 31 USCA imposed the duty upon the government of maintaining all forms of money at a parity of value with the gold standard specified in the statute, that it was necessary to fulfill that duty for the government to own or control the entire domestic stock of existing gold.

The defendant also urged that the restrictions imposed upon the private occupation of gold mining, including the power to fix the price of gold, were reasonably related to the constitutional power conferred by Sec. 8 of Article I of the Constitution, which power is expressed in the Constitution as follows:

"To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures".

In our argument which follows, we will state the claims as asserted by the plaintiff and the law in support thereof.

In opposition to the contentions advanced by the defendant, we state the plaintiff's claims and contentions with respect to those matters in positive form as follows:

(1) The ownership or control of the entire domestic stock of existing gold had no relationship whatsoever to the duty to maintain the parity called for by Sec. 314 of Title 31 USCA;

(a) As a matter of fact the ownership or control of the entire domestic stock of gold was not, never has been and is not now necessary to the fulfillment of the purpose of that statute nor of the duty imposed thereby.

(b) As a matter of law that statute does not require that the price of gold be maintained at a parity with the nominal amount or value of irredeemable paper currency issued by the government.

(2) That the restrictions imposed upon the private occupation of gold mining and the price fixing regulations included within those restrictions have no relation whatever or in any manner to the constitutional power above quoted to regulate the value of coined money and of foreign coin.

We will discuss those positive contentions hereafter in our argument.

Meanwhile we state the essential fact to be this:

The government asserts that no one may produce gold without a license from the government, and then requires as a condition for the granting of that li-

cense the agreement from the licensee that the licensee will turn over to the government all of his gold in exchange for irredeemable paper currency, at the rate of one ounce of gold for each \$35.00 face amount of such irredeemable paper currency.

The broad question presented is this: under the Constitution of the United States, has the government, which granted a patent covering a mining claim without any conditions attached to that patent, the power thereafter to assert that the owner of that patent may not produce from his mine the commodity which is found on the patented claim except under a license granted by the government, which license will not be issued unless the patentee agrees in advance to deliver all of the commodity produced by him (gold) to the government in exchange for a specified amount of such paper currency when, in point of fact, the cost of production of that commodity (gold) must be paid for in paper currency, and when the cost of production thereof, measured by such paper currency, exceeds the amount of such paper currency which the government says it will give for all the gold produced?

The record in this case and the subject matter show the necessity for accurate and precise language. Therefore, before presenting our argument, we will define our terms, giving to those words their plain ordinary meaning as declared by Webster's dictionary. We shall also state in the precise words of the Constitution the limited power granted thereby to the Federal Government over money.

With this precision we hope to avoid in this brief the confusion which followed by using loose language with respect to the subject matter which must be discussed in precise and accurate terms.

Gold: A metallic element of characteristic yellow color, the most precious metal used as a common commercial medium of exchange.

Commodity: That which affords convenience or profit, especially in commerce, including everything movable that is bought and sold—goods, wares, merchandise, produce of land, etc.

Money: Metal, as gold, silver or copper, coined or stamped and issued by a recognized authority as a medium of exchange; coinage in general.

Coin: A piece of metal certified by a mark or marks upon it, to be of a definite intrinsic or exchange value and issued by governmental authority to be used as money.

Dollar: A coin of the United States.

Standard: That which is set up and established by authority as a rule for the measure of quantity, weight, extent, value or quality; especially the original specific weight or measure sanctioned by a government as the standard pound, gallon, yard, meter or the like.

Standard of Value: The commodity which is made the measure of value in any comparison of values; specifically that which is the measure of value in a monetary system.

Essentials of a Monetary System: "Every monetary system must be based on a standard unit of value which consists of a fixed quantity of some definite concrete substance to be measured by the units of weight or space". (Encyclopedia Britannica, caption MONEY.)

Regulate: To govern or direct according to rule; to fix the time, amount, degree or rate of by adjusting, rectifying, etc. so as to regulate temperature, pressure or speed; also to adjust so as to work accurately or regularly; as to regulate a clock, carburetor or a meter.

Those definitions and principles establish that gold as gold, is a commodity. If and when gold be cast into coins and stamped with the stamp of the government as a guarantee of the weight and purity of the metal, which constitutes their value, such coins become money.

The very word "money" is derived from Moneta, another name for the goddess Juno. In her temple was kept the die for stamping coins; hence such stamped coins were called "Money".

Before coining gold into money a government must acquire the metal just as it must acquire silver and copper before coining those metals into money. We shall show hereafter that throughout the history of the United States the government has had full and complete power to buy those metals, gold, silver and copper in order to coin them into money.

We now quote two relevant provisions of the Constitution.

Congress shall have power “to coin Money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures”. Constitution Article I, Sec. 8.

“No State shall * * * make anything but gold and silver Coin a Tender in Payment of Debts”. Constitution Article I, Sec. 10, Cl. 1.

**THE POWER TO REGULATE THE VALUE OF COINED MONEY
AND OF FOREIGN COIN AND THE POWER TO FIX THE
STANDARD OF WEIGHTS AND MEASURES.**

Those two powers, first, the power to coin money and, second, the power to regulate the value of such coined money and of foreign coin were granted by the same clause of the Constitution, which granted the power to fix the standard of weights and measures. Thus in one clause are granted three powers, one, to coin money, 2nd, to regulate the value of coined money and, 3rd, to fix the standard of weights and measures. The three powers are distinct and separate. They are, however, associated together in the Constitution because they are allied powers. The power to regulate the value of coined money could not be exercised unless and until Congress had fixed a standard of value by which to regulate the value of such coined money. The Supreme Court has said of that power:

“This power of regulation is a power to determine the weight, purity, some impression and denomination of the several coins and their relation to each other, and the relations of foreign

coins to the monetary unit of the United States.” (*Hepburn v. Griswold*, 8 Wall. 603, 616, 19 L. Ed. 513.)

The same Court referred to that power as:

“ ‘an important trust invested by the Constitution, and to the obligation to fulfill that trust on the part of the Government, namely the trust and duty of *creating and maintaining a uniform and pure metallic standard of value* throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for *the very purpose* as assigned by the framers of that instrument, *of creating and preserving the uniformity and purity of such a standard of value* * * * having emitted a circulating medium for the purposes of the community and for the actions of the Government itself, they are accordingly authorized *and bound in duty to prevent its debasement* * * *.” (*U. S. v. Marigold*, 9 How. 560, 568, 13 L. Ed. 257.)

That duty to preserve the fixed standard of value has been affirmed by all the authorities. In his report to Congress on the establishment of a mint Alexander Hamilton said:

“There is scarcely any point in the economy of national affairs of greater moment than the uniform preservation of the intrinsic value of the money unit. On this the security and steady value of property essentially depend”. (See Hamilton’s Report, Annals of the First Congress, Vol. II, pp. 2111 to 2140.)

Thomas Jefferson confirmed Alexander Hamilton’s report by letter to Hamilton in February, 1792. He wrote:

“Should it be thought, however, that Congress may reduce the value of the dollar, I should be for adopting for our unit, instead of the dollar, either one ounce of pure silver or one ounce of standard silver so as to keep the unit of money a part of the system of weights and coins”. (Jefferson’s Writings, edited by H. A. Washington, Vol. III, p. 330.)

Justice Story says that the very purpose of the power to regulate the value of coined money was “to secure it from debasement”. (Story on the Constitution, Sec. 1118.)

Hamilton preferred the use of the word “Unit” to the word “Dollar”, but recognized the general use of the word “Dollar”. (See Hamilton’s Report, *supra*.)

The first dollar of the United States was a silver coin which our First Coinage Act made the “Dollar” or “Unit”. (1 Stat. at Large, p. 248.)

There was no gold dollar of the United States until 1849 when, after the discovery of gold in California, Congress authorized a small gold coin and required it to be “of the value of one dollar or unit”, meaning the silver unit. (9 Stat. p. 397.)

Because such new gold coin was of the “value of the silver dollar”, the people generally called it a dollar, but that was the first time that the word dollar had been applied to a gold coin. In 1873 when Congress stopped the coinage of silver dollars, the statute made such gold dollar “the unit of value” (17 Stat. p. 426) and later confirmed that by the Act of 1900, which established the gold dollar of 25.8 grains of gold as the standard unit of value.

**THE DISTINCTION BETWEEN REGULATING THE VALUE OF
COINED MONEY BY A FIXED METALLIC STANDARD AND
DEBASING THE STANDARD ITSELF.**

President Cleveland made the distinction clear in a brief sentence:

“There is a vast difference between a standard of value and a currency for monetary use. The standard must necessarily be fixed and certain.”
(Cleveland’s Message to Congress of December 2, 1895.)

Under the above quoted authority Congress was under the duty of protecting the metallic standard of value as the measure by which to regulate the value of all coined money—our own coined money as well as foreign coin. The standard of value was to remain fixed while the value of coined money was to be regulated by that standard. The power to regulate the value of coined money does not include the power to change the standard or regulation. The difference is essential and is made clear by a simple illustration.

Of course Congress has power to regulate the temperature of its own meeting room. In order to regulate that temperature it must have a standard, which is the thermometer, which registers the temperature. We are quite certain that if Congress changed the scale upon the thermometer and said that in doing so it was exercising its power to regulate the temperature of its meeting room, the people would laugh that Congress out of power. By exactly the same reasoning, if Congress reduced the standard of value, which is the measure of value of coined money, and said that

by reducing the standard it was regulating the value of coined money, its statement would be an absurdity.

A change of a standard, which is the regulator, is not the exercise of the power to regulate the value of money.

We note that Congress has the same power to regulate the value of foreign coin that it has to regulate the value of our own coin. No one would assert that a debasement of our standard of value would be regulating the value of foreign coin. For the same reason no one may properly assert that a debasement of our standard of value is any regulation of the value of our coined money.

The constitutional power of Congress is limited to regulate the value of coined money—our own coined money and of foreign coin. That is the extent of the power. Congress has no power to fix the value of money or to regulate the value of paper currency.

The value of coined money depends upon the weight and purity of the metal in any coin, i.e., the intrinsic value of that coin. Paper currency has no intrinsic value. Its value, if any, depends upon whether it can be redeemed in coined money upon demand.

Since paper currency has no intrinsic value, it would be impossible for Congress to regulate the value of paper currency and, accordingly, under our Constitution Congress has no power to regulate or attempt to regulate the value of paper currency.

GOLD.

Gold, as metal is merely a commodity possessing certain unique qualities; but it is a commodity just as are silver, nickel and copper.

As a commodity produced by a citizen it becomes his property just as does any of the other metals produced by him, but it continues only as a commodity. *As a commodity it is not and cannot constitute money.* It continues to be a commodity even when processed or refined.

If a nation adopts that commodity as its money and casts it into coins bearing the government stamp as a guarantee of the weight and purity of its metal, that coin becomes money and fulfills the functions of money as (1) a standard of value, (2) a medium of exchange, and (3) a storehouse of wealth.

All money is a creature of law. Without law there could be no money. Only the law can authorize coined money.

When our law defines a specified amount of gold as the standard unit of value, it is futile to discuss the value of gold, because gold itself is the measure of value.

When a foot had been fixed as the unit of length, or a pound as the unit of weight, this Court would waste no time hearing arguments about the length of a foot or the weight of a pound.

For the same reason it is futile to discuss the value of gold.

Value means “worth”. Value in the abstract is an ideal thing; in the concrete the value of anything must be expressed in terms of something else, so that an expression of value requires a comparison, and thus the value of any commodity is relative to that with which it is compared; it is not an absolute quality.

For that reason, and as a matter of practical necessity, a nation must establish an absolute—a standard by which to measure and express values.

The Supreme Court has said that such a standard is “indispensable for the purposes of the community and for the action of the Government itself”. *U.S. v. Marigold*, 9 How. 560, 586, 13 L. Ed. 257.

When gold is declared by the government to be the standard unit of value, common sense will preclude any discussion of the value of gold and even of the price of gold. For that reason when a specified amount of gold was our unit of value, we never discussed the value of gold or the price of gold. We did speak of “the coinage value of gold”, i.e., the amount of gold contained in the gold unit under our Coinage Act, which was the measure of our values as well as our monetary unit.

With the free coinage of gold the producer or holder of that gold received in exchange for his refined gold the identical amount thereof, but in the form of gold coins. Since one ounce of that refined gold was the exact amount contained in \$20.67, we said that gold had a “coinage value” of \$20.67 per ounce.

But such coinage value was never forced upon the producers of gold under threat of penalties. They could do with their gold as they chose. Neither that phrase nor any law ever passed by the United States attempted to fix the value of gold, but permitted a specified amount of gold to function, as the standard by which to regulate the value of coined money, of our own coined money and of foreign coin.

The value of coined money depends solely upon the value of its pure metal, measured against the metallic standard of value.

The Supreme Court has said that the dollar was declared to be legal tender because it is a piece of metal, certified to be of a certain weight and purity. *Bronson v. Rodes*, 7 Wall. 229, 250, 19 L. Ed. 141.

The same Court has said "the basis of our dollar of account * * * is the standard gold dollar of 25.8 grains * * *", and also said that the true method of comparing foreign coin with ours is "to ascertain the amount of pure metal in each * * *. This practice is in accord with the rules laid down by the most enlightened economists". *Arthur v. Richards*, 23 Wall. 246, 259, 23 L. Ed. 95.

Accordingly our statute established the weight and fineness of the metallic standard of value, which it declares to be of gold. (Title 31, Sec. 311, USCA.)

Another statute requires that our money of account shall be expressed in "dollars" or "units." *Section 371.*

Another statute specifies that the value of foreign coin, as expressed in our money, shall be the value of the pure metal of such foreign coin of standard value.
Section 372.

Another statute requires gold coins to be of full weight in order to be legal tender at their face value. If of less than full weight, such gold coins are to be legal tender at the value in proportion to their actual weight. That limitation of the legal tender capacity of gold coins to their actual value is carried forward in the Joint Resolution of June 5, 1933. (See Title 31, USCA, Sec. 462.)

Thus, all of our laws since the inception of our government, established that the value of coined money and its use as legal tender depend solely upon the weight and quantity of its pure metal, i.e., its intrinsic value.

WHEN GOLD WAS MONEY.

Gold was authorized as our money from 1792 down to and until January 30, 1934.

With gold coinage Congress could exercise its power to regulate the value of coined money. Thus the Eagle was required to be of the value of ten Dollars or Units. To regulate the value of the Eagle as coined money was merely to compel that the Eagle should have a value ten times in excess of the value of the gold dollar, and that, therefore, the gold content of the Eagle should be ten times the gold content of the dollar or unit.

But at all times, when gold was our money, the people had the right to own and possess gold in any form, either as newly mined gold or as processed gold or as bullion, and that right continued even after the enactment of the so-called parity statute in 1900.

During all of that time the government did not have to control the domestic stock of gold nor to prohibit the private ownership of gold in order to maintain the parity required by the statute of 1900, nor to regulate the value of coined money. On the contrary, the laws of this nation, which establish the gold standard as the necessary requisite by which to regulate the value of coined money, also recognized that gold itself was and continued to be a commodity. Those laws also recognized the absolute rights of ownership in the producer of gold.

The Coinage Act of 1873 made the gold dollar of 25.8 grains the "Unit of value". (17 Stat., p. 426.) The same Coinage Act of 1873 did not attempt to control all gold or to require that the producer of gold should surrender his commodity at any fixed price. If the producer desired he could have his gold coined into money. *But the same statute provided that the producer of gold might, if he chose, have his gold cast into bars either of fine gold or of standard gold, and have such bars stamped with the designation of the weight and fineness of their metal.* (17 Stat., p. 427; USCA Title 31, Sec. 325.)

The producer owned his product—the commodity which he had produced. It remained as his property even though gold, when coined, became the money of

the country and even though a fixed amount of gold was then the declared national standard of value.

Gold, as gold, was a commodity. Gold, when cast and stamped by the government, became coined money, but each in its own form was a thing apart from the other. During all of that time the gold dollar was the standard of value by which the government was obliged to regulate the value of all other coined money. *But, at the same time, there was a free market for gold which was merely a commodity.* And during all of that time the laws authorized the government to buy gold at varying prices.

In 1895 the government contracted to buy millions in gold in exchange for government bonds payable in coin at a price for such bonds of \$104.496 or at a premium of 4.496%. (See Hepburn on Currency.)

The simple fact is that at all times the government had to obtain the metal which it desired to make coined money. The government did so and, accordingly, bought not only gold but silver, nickel and copper, all of which metals (as commodities) were necessary for the coinage of our metallic currency. We cite some of the numerous statutes authorizing the government to acquire those metals, which statutes were in effect while we used gold as money. The cited statutes appear in Title 31, USCA, as follows:

Sec. 408 authorized the purchase of gold with government bonds;

Sec. 409 authorized borrowing gold on government notes or bonds and selling such bonds to obtain gold;

Sec. 325 authorized an owner of gold or silver to have it cast into bars as distinguished from coin as money;

Sec. 335 authorized the purchase of silver for coinage.

Those statutes establish the fact that it was not and is not necessary to control all domestic gold or to prohibit the private ownership of gold as a commodity, either to maintain the parity required by the statute of 1900, or to exercise the constitutional power to regulate the value of coined money. *The private ownership of the commodity gold did not and could not interfere with either of those functions.*

The statutes which authorized the purchase of silver, nickel and copper to be coined into money are merely further proof of that fact by way of analogy. We, therefore, do not cite those statutes.

However, the indisputable fact is that from 1792 and until January, 1934, the government of the United States used gold as coined money, and never during that time was the free market for gold in the United States abolished. *Gold coin was used as money, while gold itself remained as a commodity.* The use of gold as money did not affect gold as a commodity nor vice versa. During all of that time the Constitution was the same in this respect as it has been since 1934, since the power granted thereby to coin money and regulate the value thereof has never been changed.

From 1900 and until January, 1934, the so-called parity statute was in effect. But during all of that

time there was a free market for gold in the United States. Gold, as money, was one thing and gold, as a commodity, was another. The use of gold as coined money had no effect upon gold as a commodity or vice versa.

For those reasons we submit that as a matter of fact and as a matter of law, government control of all domestic gold has no relationship to the constitutional power of Congress to coin money and regulate its value, and has no relationship to the operation of the so-called parity statute.

Over and beyond that it is a fact that with the exception of Soviet Russia, no other major nation attempts to control the gold within its borders, or attempts to prohibit the ownership of gold by the people or attempts to prohibit a free market for gold.

In all of such other major nations the people have the right to own gold and there is a free market for gold.

The purpose of our government was to protect the freedom of the people by guaranteeing their right to life, liberty and property. It is, therefore, essential that in order to protect freedom the people shall be protected in their property, and money of intrinsic value such as gold is the only form of property which many an American citizen has the capacity to acquire through his own efforts.

As distinguished from the principles underlying our government, the system of Communism may be explained in two sentences. First, the abolition of any

belief in God, or the right to believe in God; and, second, the abolition of private property. These latter words are taken from the Communist Manifesto itself. Necessarily, therefore, the communists in power deprive their people of any right to own gold as a necessary means of enslaving those people.

A statement attributed to Lenin and other communists should be borne in mind:

“The surest way to overturn an existing social order (government) is to debauch the currency”.

GOLD IS ABOLISHED AS MONEY.

On June 5, 1933, Congress amended the Joint Resolution of May 12, 1933. (48 Stat., p. 112.)

In the USCA Title 31 that Joint Resolution is broken up into two parts, being Sections 462 and 463. That Act prohibited and made illegal every provision in any obligation which purported to require payment in gold, or in an amount of money of the United States *measured by gold*.

The Act defined “obligation” to mean every obligation payable in money of the United States. The same Act provided

“any such provision contained in any law authorizing obligations to be issued by or under the authority of the United States is repealed * * *.”
(Sec. 463.)

Note that the Act prohibited any provision for an amount of money “measured by gold”. (Sec. 463.)

Since a standard of value means the measure of value in a monetary system, and since the statute at that time declared 25.8 grains of gold to be the standard unit of value, that Act prohibited the use of the national standard of value and thereby made it impossible for such standard to fulfill the only function for which it was established, i.e., to serve as the measure of value of money.

By depriving the national standard of value of its only function, the statute necessarily implicitly abolished the standard itself. The effect of the statute must have been to repeal the statute which declared the dollar of 25.8 grains of gold as the standard Unit of value. An amazing feature of that Resolution is that it was amended on June 5, 1933, by adding to its clause which declared all coins and currencies to be legal tender, the following provision:

“Except that gold coins, when below the standard, weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.”
(48 Stat. 52; USCA Title 31, Sec. 462.)

Thus the same Act which outlawed gold as the measure of value of money limited the legal tender capacity of gold coins (one of the chief functions of money) to the actual weight and purity of their gold, which itself determined their value, and which therefore was the measure of their value as legal tender.

After Executive Orders had called in all gold coin and bullion and the same had been placed with the Federal Reserve Banks, Congress passed the Act of

January 30, 1934, erroneously called the "Gold Reserve Act". (48 Stat., pp. 337 to 341; USCA Title 31, Sec. 315b et seq.)

(For the convenience of the Court we expect to make available copies of the Federal Reserve Bulletin for February, 1934, which contains the message of the President requesting such legislation, the legislation itself and the Regulations issued thereunder.)

That Act purported to pass title to the Federal Government to call in gold coin and gold bullion. (Sec. 2a.)

The Act prohibited the coinage of gold and prohibited the payment or delivery of gold coin by the United States, and directed that all gold coin of the United States should be formed into bars. (Sec. 5.) The Act prohibited the redemption of currency in gold. (Sec. 6.)

The same Act authorized the Treasury *to purchase gold in any amounts at home or abroad*, with obligations or currency of the United States, at such rates and upon such conditions as might be determined advantageous

"any provision of law relating to the maintenance of parity * * * to the contrary notwithstanding". (Sec. 8.)

The same Act authorized the Treasury "to deal in gold and foreign exchange". (Sec. 10.) The effect of the Joint Resolution of May 12, 1933, and of the so-called "Gold Reserve Act" was simply to abolish gold as money within the United States.

Gold in the form of coin or bars was no longer a reserve for banking or for the currency system of the United States. Since it could not be paid out there could be no demands upon it and, therefore, it could not constitute a reserve.

The use of gold as a coin, as a medium of exchange, as a standard of value and as a storehouse of wealth was abolished. Those, however, are the functions of money, but the law abolished gold as money within the United States and prohibited its use for any of the functions of money. The same Act specifically repealed all legislation inconsistent with its provisions. (Sec. 17.)

Under that legislation gold ceased to be money within the United States. Congress abolished our monetary and our coinage system and attempted to substitute for it a system of managed currency consisting of irredeemable paper currency. Such abolition of gold as money deprived gold coin of the status which it had acquired by law, to wit, as the money of the country, and restored gold to its original status as a commodity—the status which it had held before it had become our money by law.

From then on gold should have been unhampered by any proper restrictions applicable to money for gold had no relationship whatsoever to any money within the United States. However, gold continued to exist in nature within the United States. It could be mined as ore and after this had been produced and completely processed it became gold—the commodity

—just as iron became a commodity after the processing of the ore from the Mesabi Range.

With the passage of the Gold Reserve Act of 1934 the commodity, gold, had no more relationship to money within the United States than did the commodity, iron. But nevertheless, by the same Act which abolished gold as money, the Secretary of the Treasury undertook to prescribe the conditions under which “gold may be acquired, held, transported, melted or treated” (Sec. 3), ignoring that he was limited in authority by the very purpose of the Gold Reserve Act of 1934, to such former monetary gold as he might have or acquire and that he could not constitutionally extend his control to unmined commodity gold.

The same Act prescribes that any gold “withheld, acquired, melted or treated * * * earmarked or held in custody in violation of this Act or any regulation issued hereunder, or license issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned etc.” and in addition, “any person failing to comply with the provisions of this Act or of any of such regulations or license shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred”. (Sec. 4.)

We note that the Act does not provide for any criminal penalties. (*Bauer v. United States*, (1957) (C.A. 9th) 244 F. (2d) 794.)

We stress the provisions of the Act which authorize the Secretary to purchase gold *at home* at discretion-

ary prices (Sec. 8) and authorizing him to deal in gold (Sec. 10) and authorizing the condemnation of gold held without a license. (Sec. 4.)

Such provisions of the Act establish that gold is a commodity. That fact deprives the Federal Government of any power to set the price thereof for reasons which we will hereafter set forth. At this point we note only that the grant of specific authority to the Secretary to buy, gold, to deal in gold and to condemn gold in and of themselves *negative any power in the Secretary to set the price of gold.*

If the Act had authorized him to set the price of gold there would be no necessity for authorizing him to buy, to deal in or to condemn gold. Buying or dealing in gold means buying or dealing in it on a free market at prices reached by mutual agreement between parties; condemnation means the exercise of sovereign power, which requires the determination of just compensation by the courts.

When the Secretary was authorized to buy, deal in or condemn, those very authorities, in and of themselves, deny any power in the Secretary to set the price of gold. If the Secretary had power to set the price of gold there was no reason for giving him power to buy, deal in or to condemn gold.

Nevertheless, the Regulations issued by the Secretary of the Treasury require and impose conditions upon the granting of a license, and one condition is that the licensee shall turn over all gold produced by him to the Treasury in exchange for irredeemable paper currency, and by his Regulations the Secretary

prescribes that all gold delivered to the mints shall be paid for by them at the rate of \$35.00 *per fine ounce*, and *reserves the right to change that price*. (Regulations, Sec. 54.44.)

The thing which is offered in exchange for such gold is not dollars or coined money, but merely the irredeemable paper currency of the United States which, as we shall show hereafter, is only a promise to pay another promise to pay.

WHAT THE GOVERNMENT OFFERS IN EXCHANGE FOR GOLD.

The Regulations prohibit the processing of gold produced by a citizen unless that citizen agrees to deliver the gold to the government for paper currency, such as Federal Reserve Notes, which practically constitute our only currency. The statute declares Federal Reserve Notes to be the obligation of the United States. (USCA Title 31 Sec. 411.)

Until 1934 such notes were redeemable in gold, but in January, 1934, the statute was amended to make them redeemable in "lawful money". The meaning of the term "lawful money" cannot be defined; even the government does not know what it means.

It is a matter of common knowledge that Mr. J. F. Davis sent to the Treasury a Federal Reserve Note for ten dollars, and asked that it be redeemed in "lawful money". In response the Treasury sent him two \$5.00 United States notes. Mr. Davis returned one of such \$5.00 notes and demanded five dollars. On De-

cember 29, 1947, the Treasury wrote to him that the term "lawful money" had not been defined in Federal legislation, but that, since the legislation of 1933 the term "lawful money" no longer had special significance, and returned to him the five dollar United States note (see photostatic copies of said letters in "Inflation in the United States" by Paul Bakewell, Jr.).

Thus, Federal Reserve Notes are, at best, merely promises to pay another promise to pay. Such is the medium which the government offers to pay for gold.

The Regulations purport to fix a price of \$35.00 per ounce for fine gold, but such price, while expressed in dollars, does not mean dollars but means merely paper currency which promises to pay dollars, even though the fulfillment of that promise is prohibited by law, and although the government cannot and does not fulfill that promise.

As a condition for granting a license to carry on lawful business of mining and processing gold, the government requires the producer of such gold to deliver every ounce thereof to the government in exchange for irredeemable paper currency having a face value of \$35.00. The government does so even though the cost of production of such gold must be measured and paid for in the same paper currency, and even though, as the complaint alleges, such cost of production per ounce, exceeds \$35.00 face or nominal amount of such paper currency.

THE SO-CALLED PARITY STATUTE.

That Statute, as enacted in 1900, fixed the gold dollar of 25.8 grains of gold as the standard unit of value and required all forms of money issued or coined by the United States shall be maintained at a parity of value with that standard and makes it the duty of the Secretary of Treasury to maintain such parity. (Title 31, U.S.C.A., Section 314.)

But the Gold Reserve Act of 1934 abolished gold as money and repealed all prior legislation inconsistent with that Act. The joint resolution of May, 1933 had declared it illegal to measure the value of money by gold. We submit that because of such later legislation, the Parity Act of 1900, which measured the value of money by gold, ceased to be in effect. How may we assert that all "forms of money" shall be maintained at a parity with a fixed gold standard, when the law declares it illegal to measure the value of money by gold?

However, even if we assume that such Statute be still in effect then we submit that the duty under the Statute is to maintain all forms of currency at a parity of value with the gold dollar; *and not to maintain gold itself at a parity with the nominal value of paper currency.*

THE REASONS FOR AND THE PURPOSES OF THE PARITY ACT OF 1900.

The Act of 1873 had made the gold dollar the standard of value instead of the former silver dollar, and had stopped the coinage of the former silver

dollar, which prior thereto had been the "unit or dollar". (17 Statute 426.) But the old silver dollars remained in circulation. Those silver dollars were not the equivalent in value of the gold dollar or unit. For that reason Congress permitted such silver coins to be legal tender for an amount not exceeding \$5.00. (U.S.R.S. 1878, Section 3586, Page 708.)

In 1878 the Silver Purchase Act was enacted. That Act permitted silver coins to be legal tender "except where otherwise expressly stipulated in the contract". (20 Statute, Page 25.)

That statute remains on the books today. (USCA, Title 31, Section 458.)

In 1890 another Silver Purchase Act was enacted. (26 Statute, Page 289.)

The advocates of "cheap money" obtained the coinage of silver "dollars", the actual value of which was less than the gold "Dollar or Unit"; and the value of such silver coins sank from about 93¢ in 1878 to about 52¢ in 1896. (Hepburn on Currency.)

Under those circumstances Gresham's Law began to operate; the cheaper money, the dearer money—gold was out of circulation. Gold was withdrawn and exported. Silver piled up in the federal treasury; the Government was threatened with bankruptcy. The consequences of the Silver Purchase Acts are a part of history. Presidents Hayes, Arthur and Cleveland set out those consequences in their messages to Congress between 1878 and 1886. (Messages and Papers of the Presidents, Volumes VII and VIII; Hep-

burn's History of Currency; Dewey's Financial History of the United States; Kemmerer—Gold and the Gold Standard, Page 98.)

In 1895 the purchase of millions in gold in exchange for Government bonds at a premium of 4.496%, heretofore referred to, was a consequence of those Acts.

Out of the ensuing struggle for sound money came the Gold Standard Act of 1900, which fixed the gold dollar of 25.8 grains as the standard unit of value and which required all forms of money issue or coined by the United States to be maintained at a parity of value with that standard, and made it the duty of the Secretary of the Treasury to maintain such parity. (U.S.C.A., Title 31, Section 314.)

The same Act states that the parity Statute was not intended to preclude the use of silver through international bimetallism, whenever the nations could secure such bimetallism at a ratio which would insure permanence of relative value between silver and gold. (U.S.C.A., Title 31, Section 313.)

Thus the purpose of the Parity Provision of the Act of 1900 was to achieve the use, as a part of the circulating medium, of silver coins, which had less intrinsic value than the gold unit or dollar. Such use could be achieved only by the guarantee of the Government that such silver coins would be kept at a parity with the gold dollar within the United States. That guarantee was expressed in the Statute of 1900.

The only possible way to achieve and maintain the parity of a silver dollar of less intrinsic value than

the gold dollar with the gold dollar itself was to require the Government to redeem all of such silver dollars in gold upon demand.

The Government itself has always construed the Statute requiring the maintenance of parity to mean the obligation of the Government to redeem all other forms of money in gold. (Dewey's Financial History of the United States, Page 437; Hepburn on Currency.)

The Government itself has so indicated both in the gold clause case and in this case.

In the gold clause case the Government said:

“The conventional method of maintaining parity is the redemption of currency in gold coin.”

(294 U.S., Page 265.)

In this very case in its brief in the District Court the Government states:

“* * * the parity of the dollar and gold had been maintained through gold coinage and redemption by the Government.”

(Deft.'s Supp. Brief in Dist. Ct., p. 15.)

Thus the Government itself established that the parity required by the Statutes, is the parity of all other forms of currency with the gold dollar—not the parity of the gold dollar with all other forms of currency.

The Government also established that the method of achieving that parity is by the redemption of such other currency in gold coin.

It will be noted that the quotation from the Government's brief in this case in the District Court used the phrase "the parity of *the dollar* and gold". In that sentence the Government used the word "dollar" as meaning paper currency. It could not have meant the gold dollar itself because the gold dollar is the specified amount of gold described by the Statute as the unit of value. Plainly, the Statute can not mean that the gold dollar itself should be maintained at a parity with gold. Such a requirement would be an absurdity.

But the record shows that in this case the Government attempts to pervert the meaning and purposes of the parity Statute. The true meaning and purposes of the parity Statute was to insure that all other coins and currencies issued by the United States would be kept at a parity with the gold dollar by means of the obligation to redeem such other coins or currency in the gold dollar upon demand. *Its purpose was not to maintain gold at a parity with a debauched and constantly depreciating paper currency.* That cannot be done.

NEITHER GOVERNMENT CONTROL OF GOLD NOR THE SETTING OF THE PRICE OF GOLD IS NECESSARY EITHER TO THE PERFORMANCE OF THE STATUTORY DUTY TO MAINTAIN ALL CURRENCY AT A PARITY WITH THE SPECIFIED GOLD DOLLAR, NOR TO EXERCISE THE CONSTITUTIONAL POWER TO REGULATE THE VALUE OF COINED MONEY.

That such arbitrary powers are not necessary for either of such purposes is true as a matter of fact and as a matter of law.

As a Matter of Fact.

The parity statute was in effect from 1900 until 1934; the constitutional power to regulate the value of coined money has been in effect since 1789.

Until 1934 the government did not attempt to control domestic gold nor set the price thereof but there was always a free market for gold, *and yet during all those years the government complied with the parity statute and Congress exercised the constitutional power to regulate the value of coined money.* The facts speak for themselves.

In point of fact and by way of analogy, every major nation in the world, with the exception of Russia, today maintains a monetary or currency system, and simultaneously permits a free market for gold.

As a Matter of Law.

The parity statute required the government to maintain the value of its currency at a parity with a specified amount of gold—the gold Unit and “standard of value”. But subsequent legislation prohibits measuring the value of currency by the national standard of value—gold.

As Justice Stone wrote: The very purpose of such legislation was

“the suppression of the use of gold as a standard of currency value”.

Guaranty Trust Co. v. Henwood, 307 U.S. 247, 262, 83 L. Ed. 1266, 59 S. Ct. 847 (dissent).

Such subsequent legislation, in effect since 1933 and 1934, is inconsistent with the old parity statute which

measured currency by gold. And such subsequent legislation expressly repealed any provision for measuring value by gold contained in any law authorizing any obligation of the United States. (USCA Title 31, Sec. 463.)

Plainly, to maintain the parity required by the old statute, would measure the value of currency by the gold unit and thus violate the existing statute.

Furthermore, both the Gold Reserve Act itself and the Regulations issued under it established that a fixed price for gold and control of all gold was not necessary, and was not even contemplated by the Act or by the Regulations. Both the Act itself (Section 8) and the Regulations (Section 54.44), expressly authorize the purchase of gold within the United States at varying prices. They thereby preclude any fixed price.

The constitutional power is limited to the power to regulate the value of coined money; but today gold can not be coined money; the coinage of gold is prohibited. No gold coins may legally exist within the United States.

Congress can not exercise the power to regulate the value of gold coins unless such coins exist as a part of a system of coinage. When Congress abolished gold coins as money, the power to regulate the value of gold coin could not exist. When such gold coins ceased to exist the power to regulate their value ceased to exist.

Congress has no power to regulate the value of irredeemable paper currency.

Thus both the facts and the law establish that the unwarranted attempt to set the price of gold, by requiring all gold produced in the United States to be delivered to the Government in exchange for irredeemable paper currency has no relation whatsoever to the parity statute nor to the constitutional power to regulate the value of coined money. The function of the parity statute has ceased and, today, the constitutional power to regulate the value of coined money can not be exercised with respect to gold coins because they do not exist as coined money within the United States.

The claims asserted by this plaintiff are the basic and fundamental rights of a free citizen—the right to liberty and property upon which the right of life itself depends.

The most fundamental right to property is the right of a citizen to own and control that which he produces through his own effort. That is the right for which this plaintiff contends and which the Constitution was designed to protect and for which purpose the Federal Government was established by that Constitution. In opposition the Federal Government attempts to deny and destroy that fundamental right.

Because the importance of the issue cannot be minimized we have presented the above material as accurately and precisely as possible, in the hope that the essential facts expressed will add to the clarity of our Points and Authorities and the following Argument.

Points and Authorities.

(1) The United States granted by patent the “mining premises” described together with “all rights, privileges, immunities and appurtenances thereunto belonging.” (Complaint, Pars. V and VI.)

(2) The right to the metal in those premises means the right to mine or produce that metal and to dispose of it. The value of such right to mine is that it can be exercised with profit. (*Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 67 L. Ed. 322, 43 S. Ct. 158, 28 ALR 1321.)

Forbes v. Gracey, 94 U.S. 762, 766, 24 L. Ed. 313;

Erhardt v. Boaro, 113 U.S. 527, 535, 28 L. Ed. 1113, 5 S. Ct. 560;

Heydenfeldt v. Daney Gold & Silver Mining Co., 93 U.S. 634, 640, 23 L. Ed. 995.

(3) That right is protected by the Constitution and, particularly by the Fifth Amendment. (*Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 67 L. Ed. 322, 43 S. Ct. 158, 28 ALR 1321; *Central Eureka Mining Co. et al., v. Court of Claims*, 138 Fed. Supp. 281.)

(4) The property protected by the Constitution means the group of rights inhering in the owner's relation to the thing as the right to possess, use and own it. Depriving an owner of such right is a “taking” within the Fifth Amendment. (*United States v. General Motors Corp.*, 323 U.S. 373, 378, 89 L. Ed. 311, 65 S. Ct. 357, 156 ALR 390.)

(5) The Constitution *protects* the right to dispose of property as an essential attribute of such property

and protects the citizen in his right to earn a livelihood by following the ordinary occupations of life. (*Terrace v. Thompson*, 263 U.S. 197, 215, 68 L. Ed. 255, 44 S. Ct. 15; *Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 29 ALR 1446.)

(6) Such right to earn a livelihood unmolested by efforts to enforce a void enactment should be protected in equity. (*Truax v. Raich*, 239 U.S. 33, 38, 60 L. Ed. 131, 36 S. Ct. 7.)

(7) The Secretary of the Treasury is not a necessary party. (*Hynes v. Grimes Packing Co.*, 337 U.S. 86, 96, 93 L. Ed. 1231, 69 S. Ct. 968; *Williams v. Fanning*, 332 U.S. 490, 92 L. Ed. 95, 68 S. Ct. 188; *Ickes v. Fox*, 300 U.S. 82, 81 L. Ed. 525, 57 S. Ct. 412, reh. den. 300 U.S. 686, 81 L. Ed. 888, 57 S. Ct. 504; *Colorado v. Toll*, 268 U.S. 228, 69 L. Ed. 927, 45 S. Ct. 505.)

(8) Under the Constitution of the United States no department of the government has power to set the price of the metal, gold.

(9) The Trading With the Enemy Act, as amended in 1933, does not purport to set the price of the metal, gold. That Act, originally limited to time of war, was extended by that amendment to apply "during any other period of national emergency declared by the President". (USCA Title 12 Sec. 95a.) The complaint here alleges that the period of emergency declared by the President ceased to exist prior to the commencement of this action. (Complaint Paragraph IX.)

(10) The so-called Gold Reserve Act of 1934 did not attempt to set the price of the metal, gold. (USCA Title 31 Sec. 440 et seq.)

(11) Neither the Trading With the Enemy Act nor the so-called Gold Reserve Act authorize any executive officer to set the price of the metal, gold, or to exercise any regulations fixing the price of the metal, gold.

(12) Government control of all domestic gold or of gold produced within the United States after January 31, 1934 is not necessary, and has no relationship whatsoever either (a) to the provisions of the statute of 1900 which required the Secretary of the Treasury to maintain all forms of currency at a parity with a specified amount of gold—the gold content of our former dollar or (b) to the constitutional power vested in Congress by the Constitution to regulate the value of coined money and of foreign coin.

(13) The prohibition against mining, processing or owning gold obtained from her mine without a license, augmented by Regulations imposing upon the issuance of such a license, the requirement that all gold produced from her mine and processed must be turned over to the government or to one authorized by the government in exchange for irredeemable paper currency at the rate of \$35.00 face amount of such currency for each ounce of gold (a) deprives this plaintiff of the rights guaranteed to her by the Constitution, and takes her property without due process of law and without just compensation in violation of the Fifth Amendment to the Constitution; and (b) con-

stitutes legislation by the Executive Department in violation of Article I Section 1 of the Constitution as being beyond the powers conferred upon the Executive Department by Article II of the Constitution; and (c) purports to permit the Executive Department to exercise judicial power in violation of Article III Section 1 of the Constitution and causes confiscation of the plaintiff's property.

(14) The taking of plaintiff's property is not for public use, but the Act attempts to compel plaintiff to sell her property either to the government or to private parties licensed by the government for private use in industrial, professional and artistic pursuits of a commercial character, at prices below the cost of production of her property, and thereby purports to take the plaintiff's property and give it to others in violation of the plaintiff's right as the owner thereof, and in violation of the Constitution.

(15) That the irredeemable currency which the government offers in exchange for the plaintiff's gold does not and cannot constitute just compensation, and that the just compensation for plaintiff's gold cannot be measured or expressed in terms of an irredeemable paper currency, which has no intrinsic value and which cannot be redeemed in gold coin.

ARGUMENT.

If the patent by which the government granted this claim meant anything, it meant the right to produce

the metal on that claim and the right of the miner to own that metal produced by him. That patent imposed no conditions or restrictions.

The metal produced by the owner of that claim happened to be gold. The value of the mine and of the metal produced lies in the fact that the mine may be operated and its produce disposed of at a profit. Those rights and that value are protected in equity against any void enactment, which purports to destroy them under threat of prosecution or punishment, as there is no adequate remedy at law. Such relief may be granted against the officer charged with the enforcement of any void Regulations. Those elemental propositions are sustained by the authorities cited under Points 1 to 7 inclusive.

Simply put, the plaintiff's contention is that she, as an American citizen and the owner of a gold mine patented by the government, has the right to operate that mine and to produce gold therefrom, to own it and dispose of it at a profit to herself as a means of livelihood—a means of livelihood which was common throughout the United States—and the means by which all metals are produced.

The thing which she produced, gold, was, has always been and is now, a commodity recognized as a commodity by all the nations of the earth. Some of those nations minted gold into coins, thereby making such coins into money—coined money. Thereupon such coins became money, but refined gold, not cast into coins, remained as a commodity, and only as a commodity, and all of the nations recognize such gold as a

commodity even though they simultaneously use gold coins as money.

So did the United States, which used gold coins as money from 1792 down to and until 1934. But during that entire period and, while using gold coins as money, the government also recognized that refined gold was and is a commodity.

When gold coin was abolished within the United States gold coin ceased to be money, but gold remained as a commodity and *only as a commodity* since 1934.

The Regulations issued by the Executive Department prohibit acquiring, holding, melting or treating commodity gold, except under license, and no such license will be issued without requiring and compelling the licensee (the producer of the commodity) to surrender the commodity in exchange for irredeemable paper currency at the rate of one ounce of such commodity (gold) for \$35.00 face amount of irredeemable paper currency.

The same Regulations permit the ownership of that commodity (gold) by those who use it for commercial purposes in an industry, profession or art, and fixes the sale price thereof to such commercial users at the same price in the same paper currency—\$35.00 in such paper currency per ounce.

The cost of production of such gold per ounce exceeds that amount of paper currency. The Constitution gives no power to fix the price of any commodity produced by a citizen. The principles underlying freedom, the right to private property and a free economy preclude any such power.

We are not speaking here of times of war or of a national emergency; nor of the power to regulate the rates of railroads or other public utilities, which are in themselves quasi-public operations. We are asserting a lack of power in the Federal Government to fix the price at which a private citizen must sell a commodity produced on his own property, by his own effort, and at his own expense. If Congress has power to fix the price of such a commodity and to require the producer thereof to surrender the commodity produced by him for less than its cost of production, then the Constitution and the rights which it guarantees have disappeared; the limitations upon the power of and the words of that great charter have become meaningless. But Congress has not fixed or attempted to fix the price of gold as a commodity.

(1) The Trading With the Enemy Act does not effect the price of the commodity—gold. That Act was enacted as a part of economic warfare—to prevent gold or credits from this country reaching the enemy. That Act gave power to regulate or prohibit transactions in foreign exchange, etc. and the importing, exporting, hoarding, melting or earmarking of gold coin or bullion. (Title 12 USCA Sec. 95a.)

That Act was extended in 1935 to apply during any period of national emergency declared by the President. Any Regulations issued under that Act could be in force only during such a period of national emergency. But, in this case, the complaint alleges that the emergency, under which the Executive Orders were issued, had terminated prior to the commencement of this suit.

For the purpose of the motion to dismiss, that allegation must be accepted as true. (The allegation has been verified by the testimony of government officials before the Senate Committee in 1957.) But, over and beyond that, the Trading With the Enemy Act did not fix any price for the commodity, gold, and did not authorize any agency of the government to fix a price for the commodity, gold, as a condition or requisite of any license which might be issued under that Act.

No Regulation under that Act gave any power to fix the price of gold. The Gold Regulations assert in Sec. 54.1(b) that they are issued under the authority of the Executive Orders described in that section, and under Title 12 USCA Sec. 95(a). *But, such Executive Orders so described and such statute do not give any power to fix the price of the commodity, gold.*

For the purpose of ruling upon the motion to dismiss, we submit that, because the complaint alleges the termination of any such emergency prior to the commencement of this action, the Trading With the Enemy Act and any Executive Order issued under authority of that Act is absolutely irrelevant to the issue.

(2) The Gold Reserve Act of 1934 does not give power to fix the price of gold. Title to that Act is both erroneous and misleading. The Act does not, in fact, establish a "reserve" of gold. In a banking or monetary system "reserve" is the amount set aside to respond to demands which may be made upon it, but Sec. 5 of that Act directs that no gold shall be coined and no gold coin paid out or delivered in the United States. Therefore, under the terms of the

Act, gold cannot be a "reserve" for the banking or currency system within the United States.

Prior to January 31, 1934 all gold had either been turned in by the people to the government or was held by the Federal Reserve Banks.

Sec. 2 of the Act purported to pass all the right and title of such banks in and to such gold coin and bullion to the United States. That Act simply abolished gold as money of or within the United States.

Sec. 3 authorizes the Secretary to issue Regulations prescribing the conditions under which gold may be acquired, held, transported, melted or treated, imported, exported or earmarked for certain purposes, including its use for commercial purposes, and for such other purposes as in the Secretary's judgment "are not inconsistent with the purposes of this Act".

The specified purposes of the Act were "to protect the currency system of the United States and to provide for the better use of the monetary gold stock of the United States".

We submit that the phrase "monetary gold stock of the United States" could mean only the stock of gold *then held by the government*—the gold—the title to which Congress said it had transferred to the government.

The specific request of the President in his message to Congress of January 15, 1934 was that Congress should "vest in the United States Government title to all supplies of American-owned monetary gold". (Federal Reserve Bulletin, February 1934, Vol. 20 No. 2 p. 62.)

Such request was limited to the then existing "American-owned monetary gold". Accordingly, the statute purported to pass title to that gold. "Monetary Gold" must mean gold coin, since the commodity gold does not become money until it has been coined. The President did not ask for, and of course Congress could not pass title to any gold which then existed in the mines. Nothing was said about gold which might be produced and processed thereafter. Neither the President's message nor the Act itself mentioned gold which might be thereafter produced. The title to such gold remained in the owner of the mine in which it was located.

The purpose of the Act was to abolish gold as money within the United States and, to that end, "to provide for the better use of the monetary gold stock of the United States". To accomplish those purposes the Act authorized Regulations of a limited character.

The Act did not attempt to specify or fix the price of the metal, the commodity, gold, and did not authorize the Secretary, by Regulations, to fix the price of the metal, gold. It did not authorize the Secretary, when issuing licenses under the Act, to compel the licensee to surrender all gold produced and processed by him at a price fixed by the Secretary. On the contrary, and in direct opposition to the existence of any such arbitrary power, the Act clearly shows:

(a) That gold was and is a commodity to be bought and sold at varying prices, and

(b) That the price of gold, as a commodity, has no relationship whatsoever to "the currency system of the United States".

Section 8 of the Act expressly authorizes the Secretary to “purchase gold in any amounts, *at home* or abroad, with currency of the United States *at such rates* * * * as he may deem most advantageous * * *” and “notwithstanding” any law relating to parity or any law limiting the purposes for which such currency may be issued or any law requiring government obligations to be issued at not less than par.

Section 9 of the Act authorizes the Secretary

“*to sell* gold in any amount *at home* or abroad at discretionary prices”.

Section 10 authorizes the Secretary “to deal in gold”. Thus the Act, by its express language, treats gold as a commodity, whether that gold be “at home” or “abroad” and to be bought and sold and dealt in, as a commodity. Thus the Act expressly negatives any power in the Secretary to fix the price of that commodity, gold.

We do not admit that Congress has power to fix the price of gold or to authorize the Secretary to do so. But the Act did not attempt to fix the price of gold or to give to the Secretary power to do so. Directly contrary to the existence of any such power, the Act authorized the Secretary to buy and sell gold and to deal in gold at varying prices in his judgment and discretion.

Thus the Act put the Secretary in the same position as any other purchaser or seller of any commodity—a position in which he was obliged to bargain for the commodity and to agree upon a price. If the Secre-

tary had power to fix the price of gold, he would have been the master of that commodity. In such a position he would not have to bargain or agree to buy or sell; he would merely fix the price. That is not buying or selling or dealing in; that is arbitrary seizure.

Thus the law did not (and could not) give to the Secretary any power to fix the price of the commodity, gold.

Section 4 of the Act directs that gold illegally held may be condemned by specified proceedings. That provision negatives any power to fix the price of gold.

THE REGULATIONS AUTHORIZED BY THE ACT.

Section 4 directs the Secretary to prescribe by Regulations for acquiring, melting, treating, etc. gold for specified commercial purposes and for other purposes "not inconsistent with the purposes of this Act."

Since the purpose of the Act was to preclude use of gold as money within the United States, it achieved that purpose by requiring a license so as to confine the use of gold to the specified commercial purposes and for other purposes consistent with the purposes of the Act. But it will be noted that Section 4 does not authorize the Secretary to regulate the *sale* of gold as a commodity, and does not authorize the Secretary, by Regulation, to fix the price of gold as a commodity.

Section 11 of the Act authorizes the Secretary to issue Regulations "to carry out the purposes of this Act". It does not authorize the Secretary to fix the

price of gold. Fixing the price of gold is not the purpose of the Act, which purpose is stated in its preamble. Furthermore, the Act itself shows upon its face that it is not necessary to fix the price of gold in order to "carry out the purposes of the Act", for the Act itself authorizes the buying and selling of gold at varying prices.

**OTHER CONSTITUTIONAL GROUNDS WHICH
INVALIDATE THE REGULATIONS.**

The Regulations require a license. The form of application in Paragraph "G" requires compliance with the Regulations, and in Paragraph "K" requires gold to be disposed of only in accordance with the Regulations which, in Sec. 54.44 fix the price at \$35.00 per ounce. For operating without a license the Gold Regulations specify civil and criminal penalties. (Sec. 54.11.)

Under such coercion the owner of a gold mine must comply, if he is to operate his property, or suffer penalties and prosecution. The purpose and effect is to coerce. The result is not an agreement, for as the Supreme Court has held:

" * * * it lacks the essential element of consent. One who does a thing in order to avoid a monetary penalty does not agree; he yields to compulsion precisely the same as though he did so to avoid a term in jail."

Carter v. Carter Coal Co., 298 U.S. 238, 80 L.Ed. 1160, 56 S.Ct. 855.

The license issued restricts the disposition of the gold and the price to be received. (License Section E, Regulations 54.44.) The complaint alleges that the price for such gold is below the cost of its production. The result is to take the plaintiff's property without due process of law and without just compensation in violation of the Fifth Amendment.

Another result is that such price fixing is done by the Executive Department and constitutes legislation by the Executive Department in violation of Article I Section 1 of the Constitution.

Another result is to cause the Executive Department to exercise judicial power in violation of Article III Section 1 of the Constitution and, in doing so, to confiscate the plaintiff's property.

The question of just compensation is judicial. When the government takes private property, neither Congress nor the Executive Department has power to fix the compensation for such property.

Constitution, Article III Section 1;

Monongahela Navigation Co. v. United States,
148 U.S. 312, 37 L.Ed. 463, 13 S.Ct. 622.

Furthermore, under the allegations of the complaint, the gold is not taken for a public use. The complaint alleges that the Regulations require the plaintiff to surrender her gold at a price below the cost of its production, and the Regulations authorize the sale of that gold for commercial uses, i.e., for industrial, professional and artistic uses (Regulations Sub-part C) and such sales are made at the same fixed price. (Regulations Section 54.52.)

That is not taking private property for a public purpose. That is taking the property of "A" at less than its value and selling it to "B" at less than its value and for commercial purposes, and the procedure permits "B" to make a profit. That course violates the Constitution and the constitutional rights of this plaintiff.

Furthermore, the situation shows that such gold is not and cannot be used by the government for any public purpose; under the law gold cannot be coined; it cannot be used as money within the United States; it cannot be paid out by the government within the United States; it cannot be a part of the currency system of the United States and it cannot be an asset of the banking system in the United States. As shown above it cannot serve as a banking or monetary reserve, since there can be no demands upon it. Gold has been abolished as money within the United States and exists only as a commodity.

**THE EXISTING PAPER CURRENCY SHALL NOT AND CANNOT
CONSTITUTE JUST COMPENSATION FOR THE COMMODITY
—GOLD.**

Section 54.44 of the Regulations issued by the Secretary prescribes that the government shall pay for all gold \$35.00 per ounce, but expressly states "this price may be changed by the Secretary * * *"

Such price is measured and paid in paper currency. *The price of \$35.00 has remained the same since 1934.* If that price were just compensation for gold in 1934

(which we do not admit) then, *under the facts established by the government itself, it is not just compensation in 1958.*

Government agencies, government officials and government statistics prove what has become a matter of common knowledge—that prices for commodities, wages, production and of living have increased constantly at the rate of approximately 3% per year. They are still rising and at an accelerated rate. Those prices are measured against a basic price index expressed in terms of our paper currency.

Those figures by the government itself evidence what is euphemistically called rising costs, but, in fact, they establish the constant and continual depreciation of our paper currency.

In view of those figures computed and announced by the government itself, when the government put a price on gold of \$35.00 an ounce in such paper currency in 1934, the same government cannot assert that the same price is just compensation for gold in 1958. But, and beyond that, and as a fundamental principle, we submit that the Federal Government has no power to compel a private citizen to surrender private property in exchange for paper currency which has no absolute or fixed value and which contains no obligation to redeem in any absolute fixed value, and that the government has no power to measure “just compensation” in terms of such a medium.

We have heretofore in this brief shown that the so-called obligation expressed in our paper currency cannot be defined. It is merely a promise to pay

another promise to pay. There is no decision of any court which adjudges that the Federal Government has power to make our existing paper currency, which does not promise to pay coined dollars, a legal tender for anything, and there is no decision which holds that such paper currency can constitute just compensation for any property taken.

The Gold Clause Cases in 1935 did not so decide. No such issue was raised in those cases. The Legal Tender Decisions of 1871 do not and cannot apply to our existing paper currency.

The Treasury Notes of those times were definite obligations to pay coined money. The Supreme Court described them as follows:

“Every one of them expresses upon its face an engagement of the nation to pay to the bearer a certain sum. The dollar note is an engagement to pay a dollar, and *the dollar intended is the coined dollar of the United States*, a certain quantity in weight and fineness of gold or silver, authenticated as such by the stamp of the government. No other dollars had before been recognized by the legislation of the national government as lawful money”.

People ex rel. v. Supervisors of New York, 7 Wall. 26, 30, 19 L.Ed. 60.

Because those Treasury Notes were an obligation to pay coined money, the Supreme Court said that they could be used as legal tender. Here are the Court's words:

“We do not rest the validity (of the Legal Tender Acts) upon the assumption that the emission of paper notes is coinage, or any regulation

of the value of money; nor do we assert that Congress may make any thing which has no value—money. What we do assert is that Congress has power to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts or to multiples thereof." (*Legal Tender Cases*, 12 Wall. 457, 553, 20 L.Ed. 287.)

But today the paper currency of this nation is not a promise to pay coined money, or even the value thereof, as determined by the Coinage Act. Today the paper currency promises to pay.....?

The Legal Tender Decision of 1871 is no authority for the government to make irredeemable paper currency a legal tender for the payment of debts or for the payment of any commodity.

Furthermore a decision rendered by the Supreme Court in 1954 declared a principle, which destroys the effect of the Legal Tender Decisions of 1871.

The Court had held that segregation *in the states* violated the Constitution. Thereafter in *Bolling v. Sharpe*, 347 U.S. 497, 98 L.Ed. 884, 74 S.Ct. 693, the question was presented as to whether segregation in the *District of Columbia* violated the Constitution. The unanimous decision in *Bolling v. Sharpe* said:

"In view of our *decision* that the Constitution prohibits the states from maintaining racially segregated public schools, it would be *unthinkable* that the same Constitution would impose a lesser duty on the Federal Government."

(347 U.S. 497, 500.)

Under that statement it would be unthinkable that the Federal Government has power to make any paper currency legal tender for any purpose because the Constitution in Article I puts power in Congress

“to coin money and regulate the value thereof”
(Section 8)

and provides in the same article,

“no state shall make anything but gold and silver a tender in payment of debts”. (Section 10.)

Under the principles declared in *Bolling v. Sharpe*, we submit that it would be unthinkable that the same Constitution, which prohibits a state from making anything other than gold or silver a legal tender, would impose a lesser duty on the Federal Government.

THE VIEWS OF THE COURT BELOW.

The Court below expressed the view that the Regulation itself imported a lack of authority to require a licensee to agree to sell gold at a price of \$35.00 per ounce, as a condition for such license; and that if the Government had power to take possession of such gold at such price it would not require an agreement with the licensee to sell it at that price as a condition for his license (pages 10 and 11).

But the argument was made that Congress had power “to *fix* the value of money” and the Court accepted and proceeded upon that quoted, but erroneous phrase (pages 7, 8, 11, 15, 19, 21, 23 and 25).

The Court expressed the conviction that the Regulations would be beyond the constitutional power, unless there was a reasonable relationship between the Regulations and the constitutional power “to *fix* the value of money” (page 19 of transcript).

The Court also understood the Government’s argument to be that exacting an agreement to sell gold at that price would have a bearing upon the power of Congress “to *fix* the value of money” (page 12).

The Court actually said there is no question about the power of Congress “to *fix* the value of gold” (page 23).

Such statements by the Court establish that the conclusion of law as expressed, was predicated upon the erroneous idea, expressed by counsel, that Congress has power to “*fix*” the value of money or the value of gold, or that such power to “*fix*” the price of gold was reasonably related to the constitutional power of Congress.

The conclusion of law, presumably drawn by counsel for the Government, declared that the Regulations were reasonably related to the constitutional power to “regulate the value” of money (R. page 19).

But the grievous error lies in the facts that:

a) Congress has no power to “*fix*” the price or the value of gold or money;

b) That Congress does not have power to regulate the value of paper currency, popularly called money, but has power only to regulate the value of coined money.

The very clause of the Constitution uses both words—the word “fix” and the word “regulate” in their proper meaning and clearly differentiates between them. That clause is:

“To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.” (Article I, Section 8—Constitution.)

The Oxford English Dictionary defines those words as follows:

regulate—to adjust in respect of quantity, with reference to some standard.

fix—to make firm or stable, so as to secure from fluctuation or change.

Accordingly, the Constitution gave to Congress power to “*fix*” the standard; and power “to *regulate* the value of coined money”.

That was in exact accord with the meaning of the words and with the policy of the Constitution, as declared by the Supreme Court, which is to establish “a fixed and uniform standard of value” (*Ogden v. Saunders*, 12 Wheat. 213, 265, 6 L.Ed. 606); and the power to regulate the value of coined money, which is the power “to determine the weight, purity, form, impression and denomination of the several coins and their relation to each other, and the relation of foreign coins to the monetary unit of the United States”. (*Hepburn v. Griswold*, 8 Wall. 603, 616, 19 L.Ed. 513.)

Thus, by the plain and specific language of the Constitution, the only thing which Congress has

power to “*fix*” is the standard of weight and measure. The power of Congress over coined money is only “to regulate the value thereof”.

Under the Constitution Congress has absolutely no power to “*fix*” the value of coined money. Furthermore, Congress has no power to regulate the value of paper currency; but only the power to regulate the value of coined money.

For those reasons we submit that the Court below erred in its statements, which attribute to Congress a power “to fix the value of money” and in its conclusion of law, which attributes to Congress the power “to regulate the value of money” when in Section 9 power is limited “to regulate the value of *coined* money”.

But, over and beyond that the Government can not with reason contend that “a fixed price” for gold is authorized by the Gold Reserve Act or by the Regulations; or that a “fixed price” of gold, is necessary to or reasonably related to the power to regulate the value of coined money.

On the contrary the Statute establishes that it did not contemplate a “fixed price” for gold.

Section 8 of the Gold Reserve Act authorizes the Secretary to purchase gold at discretionary and varying prices, either at home or abroad. Section 9 authorizes the Secretary to sell gold at discretionary and varying prices either at home or abroad.

Section 10 authorizes the Secretary “to deal in gold”.

And the Regulations do not “fix the price” of gold. On the contrary the Regulations, in Section 54.44 declare only a current price for the purchase of gold of \$35.00 per ounce. But that is not a “fixed price”. The same Regulation expressly declares “this price may be changed” by telegraphic or mailed notice.

And Section 54.52 declares a current price for the sale of gold of \$35.00 per ounce but expressly declares “this price may be changed” by telegraphic or mailed notice.

Thus, both the Statutes and the Regulations expressly authorize a varying price for gold within the United States and thereby preclude any power to “fix the price” of gold within the United States.

In the face of those enactments, we submit that the Government can not with reason contend that “fixing the price” of gold is necessary to or has any reasonable relationship whatsoever to the exercise of the constitutional power of Congress to regulate the value of coined money.

But, and even more fundamental is the fact that today Congress has prohibited the coinage of gold or the use of gold as money. Plainly Congress is not now exercising any power to regulate the value of gold coins, as coined money. Congress can not exercise such power when gold coins no longer exist.

In point of truth and fact Congress today is not, and for years has not, been attempting to exercise the constitutional power to regulate the value of coined money.

Since 1934 gold coins have been abolished and our only coinage is of silver and subsidiary coins. No one will attempt to assert that the value of silver or other subsidiary coins has been regulated since 1873 or is being regulated at the present time. The intrinsic value of the metal in such coins is not equal to the value stamped upon them.

Heretofore in this brief we have shown, both as a matter of fact and as a matter of law, that neither control of all gold nor a "fixed price" of gold is necessary or has any reasonable relationship to the constitutional power to regulate the value of coined money. For nearly 150 years Congress exercised that power with a free market for gold and without fixing the price of gold.

We have heretofore shown that a declared price for gold has no relationship whatsoever to the Parity Statute of 1900.

We repeat only that the purpose of that Statute was to require that all forms of currency should be maintained at a parity with a fixed amount of gold, as the standard of value.

The purpose of that Statute can not be perverted to mean that gold shall be maintained at a parity with irredeemable paper currency, which, because of its nature, can not be a standard.

The absurdity of such attempted perversion is clear in view of the fact that the Government denies a citizen of the United States any right to own gold. When the people may not own gold, its value, in terms

of such paper currency, can not be ascertained or measured. Since its value in terms of such paper currency can not be ascertained or measured, it necessarily follows that it is impossible to "maintain" the value of gold at a parity with such paper currency.

We submit that the right to private property is the very basis of freedom; that gold is a commodity, and that gold produced by a miner is his property.

The people established the federal government and gave to Congress the important trust and duty of coining money and regulating the value thereof. They also prohibited anything except gold and silver as legal tender and put that prohibition in the Constitution. How may that government deprive the people who established it of their absolute right to own gold?

The London Daily Express has written:

"If you set money free, you set the people free."

But the Communists, whose Manifesto seeks "the abolition of private property" say:

"The surest way to overturn an existing social order is to debauch the currency."

To achieve that position and to maintain its power over the people the Communist government deprives the people of Russia of any right to own gold.

The United States is the only major nation which follows Russia in that respect. The relief here sought will not upset the economy of America.

The relief here sought would only be a step to restore the conditions under which the United States became the greatest nation in the world.

The abolition of money and the substitution of managed currency in 1934 paved the way for the confusion and chaos which has existed since.

In 1935 the dissenting opinion in the Gold Clause Case said:

“The impending legal and moral chaos is appalling.” (294 U.S. page 381.)

We submit that the instant case shows that what was then impending, as moral and legal chaos, *has come upon us*.

CONCLUSION.

For all of which reasons we respectfully submit that the decree of the District Court should be reversed with directions to that Court to grant the relief as prayed.

Dated, January 30, 1959.

Respectfully submitted,

PAUL BAKEWELL, JR.,

NORMAN L. EASLEY,

Attorneys for Appellant.

(Appendix A Follows.)

Appendix "A"

Appendix A

U. S. TREASURY DEPARTMENT OFFICE OF THE SECRETARY

GOLD REGULATIONS

[Reprinted from Federal Register, July 14, 1954]

(Seal)

July 14, 1954

United States

Government Printing Office

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Subpart A—General Provisions

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Authority: §§ 54.1 to 54.70 issued under sec. 5 (b), 40 Stat. 415, as amended, secs. 3, 8, 9, 11, 48 Stat. 340, 341, 342; 12 U.S.C. 95a, 31 U.S.C. 442, 733, 734, 822b, E. O. 6260, Aug. 28, 1933; E. O. 6359, Oct. 25, 1933; E. O. 9193, as amended, 7 F. R. 5205; 3 CFR 1943 Cum. Supp.; E. O. 10289, 16 F. R. 9499; 3 CFR 1951 Supp.

Subpart A—General Provisions

§ 54.1 *Authority for regulations.* By virtue of and pursuant to:

(a) The authority vested in the Secretary of the Treasury by the Gold Reserve Act of 1934, approved January 30, 1934 (48 Stat. 337; 31 U.S.C. 440), and the authority with respect to the approval of regulations issued thereunder which the President of the United States has delegated to the Secretary of the Treasury in paragraph 2 (d) of Executive Order No. 10289 of September 17, 1951 (16 F. R. 9501) and

(b) The authority which the President of the United States has delegated to the Secretary of the Treasury by Executive Orders Nos. 6260 of August 28, 1933 (31 CFR 1938 ed. Part 50), 6359 of October 25, 1933 and 9193 of July 6, 1942, as amended (7 F. R.

5205, 3 CFR 1943 Cum. Supp.), which delegations were made by the President of the United States by virtue of and pursuant to the authority vested in him by section 5 (b) of the act of October 6, 1917 (40 Stat. 415), as amended by section 2 of the act of March 9, 1933 (48 Stat. 1), and title III, section 301 of the "First War Powers Act, 1941" (55 Stat. 839; 12 U.S.C. 95a), and all other authority vested in him, the following regulations, entitled "Gold Regulations," deemed in the public interest and necessary and proper to carry out the purposes of said acts and Executive orders, are issued by the Secretary of the Treasury.

§ 54.2 *General provisions*—(a) *Scope*. Sections 54.12 to 54.34 refer particularly to section 3 of the Gold Reserve Act of 1934, as amended, and to Executive Order No. 6260 of August 28, 1933, sections 4, 5, and 6 of the Executive Order No. 6359 of October 25, 1933, and Executive Order No. 9193 of July 6, 1942, as amended; and §§ 54.35 to 54.52 refer particularly to sections 8 and 9 of the Gold Reserve Act of 1934, as amended.

(b) *Delivery requirements of 1933 gold orders*. Executive Order 6102 of April 5, 1933, Executive Order 6260 of August 28, 1933 (31 CFR 1938 ed. Part 50), and the order of the Secretary of the Treasury of December 28, 1933, as amended and supplemented, required that, with certain exceptions, all persons subject to the jurisdiction of the United States deliver to the United States gold coins, gold bullion and gold certificates situated in the United States and

held or owned by such persons on the dates of such orders. Gold coins having a recognized special value to collectors of rare and unusual coin, including all gold coins made prior to April 5, 1933, have been exempted from such delivery requirement. The regulations in this part do not alter or affect in any way the requirements under said orders to deliver gold bullion and gold certificates and gold bullion and gold certificates required to be delivered pursuant to such orders are still required to be delivered and may be received in accordance with the Instructions of the Secretary of the Treasury of January 17, 1934 (§ 53.1 of this chapter), subject to the rights reserved in such instructions.

(c) *Effect of authorizations and licenses.* (1) A general authorization contained in, or a license issued pursuant to the regulations in this part, permitting the acquisition, holding, transporting, melting or treating, importing, exporting or earmarking of gold, constitutes within the limits and subject to the terms and conditions thereof a license issued under and pursuant to Executive Order No. 6260 of August 28, 1933, for such acquisition, holding, transporting, etc.

(2) Any authorization in the regulations in this part, or in any license issued hereunder to acquire, hold, transport, melt or treat, import or export gold in any form shall not be deemed to authorize, unless it specifically so provides, the acquisition, holding, transporting, melting or treating, importing, or exporting of the following:

(i) Any gold coin (except rare gold coin as defined in § 54.20) or any gold melted by any person from gold coin subsequent to April 5, 1933.

(ii) Any gold which has been held at any time in noncompliance with the acts, the orders, or any regulations, rulings, instructions or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder.

(d) *Revocation or modification.* The provisions of this part may be revoked or modified at any time and any license outstanding at the time of such revocation or modification shall be modified thereby to the extent provided in such revocation or modification.

§ 54.3 *Titles and subtitles.* The titles in this part are inserted for purposes of ready reference and are not to be construed as constituting a part of the regulations in this part.

§ 54.4 *Definitions.* (a) As used in this part, the terms:

(1) "The acts" means the Gold Reserve Act of 1934, as amended, and section 5 (b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933 and Title III, section 301 of the "First War Powers Act, 1941" approved December 18, 1941.

(2) "The orders" means Executive Orders Nos. 6260 of August 28, 1933; 6359 of October 25, 1933; and 9193 of July 6, 1942, as amended.

(3) "United States" means the Government of the United States, or where used to denote a geographical area, means the continental United States and all other places subject to the jurisdiction of the United States.

(4) "Continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska.

(5) "Person" means any individual, partnership, association, or corporation, including the Board of Governors of the Federal Reserve System, Federal Reserve banks, and Federal Reserve agents.

(6) "Mint" means a United States mint or assay office, and wherever authority is conferred upon a "mint" such authority is conferred upon the person locally in charge of the respective United States mint or assay office acting in accordance with the instructions of the Director of the Mint or the Secretary of the Treasury.

(7) "Gold coin" means any coin containing gold as a major element, including gold coin of a foreign country.

(8) "Gold bullion" means any gold which has been put through a process of smelting or refining, and which is in such state or condition that its value depends primarily upon the gold content and not upon its form; the term "gold bullion" includes, but not by way of limitation, semi-processed gold and scrap gold, but it does not include fabricated gold as defined in this section, metals containing less than 5

troy ounces of fine gold per short ton, or unmelted gold coin.

(9) Fabricated and semi-processed gold:

(i) "Fabricated gold" means processed or manufactured gold in any form (other than gold coin or scrap gold) which:

(a) Has a gold content the value of which does not exceed 90 percent of the total domestic value of such processed or manufactured gold; and

(b) Has, in good faith, and not for the purpose of evading or enabling others to evade the provisions of the acts, the orders, or the regulations in this part, been processed or manufactured for some one or more specific and customary industrial, professional or artistic uses.

(ii) "Semi-processed gold" means processed or manufactured gold in any form (other than gold coin or scrap gold) which:

(a) Has a gold content the value of which exceeds 90 percent of the total domestic value of such processed or manufactured gold; and

(b) Has, in good faith, and not for the purpose of evading or enabling others to evade the provisions of the acts, the orders, or the regulations in this part, been processed or manufactured for some one or more specific and customary industrial, professional or artistic uses.

(iii) The value of the gold content of an article shall be computed for the purposes of this subparagraph at \$35 per troy ounce of fine gold content.

(iv) For the purpose of this subparagraph, the total domestic value of processed or manufactured gold shall be based on the cost to the owner and not the selling price. The allowable elements of such value are:

(a) In the case of a manufacturer or processor, only the cost of material in the article, labor performed on the article, and processing losses and overhead applicable to the manufacture or processing of such article; and

(b) In the case of a dealer or other person who holds or disposes of gold without further processing, only the net purchase price paid by such person, including transportation costs, if any, incurred in obtaining delivery of such article to his usual place of business.

(10) "Scrap gold" means gold filings, clippings, polishings, sweepings and the like and any other melted or unmelted scrap gold, semiprocessed gold or fabricated gold, the value of which depends primarily upon its gold content and not upon its form, which is no longer held for the use for which it was processed or manufactured.

(11) "Gold in its natural state" means gold recovered from natural sources which has not been melted, smelted, or refined, or otherwise treated by heating or by a chemical or electrical process.

(12) "Hold", when used with reference to gold includes actual or constructive possession of or the retention of any interest, legal or equitable, in such gold,

and includes, but not by way of limitation, acts of agency with respect thereto although the principal be unknown.

(b) Wherever reference is made in this part to equivalents as between dollars or currency of the United States and gold, \$1 or \$1 face amount of any currency of the United States equals fifteen and five twenty-firsts ($15 \frac{5}{21}$) grains of gold, nine-tenths fine.

(c) Wherever reference is made in this part to "sections", the reference is, unless otherwise indicated, to the designated sections of this part.

§ 54.5 *General provisions affecting applications, statements and reports.* Every application, statement, and report required to be made under this part shall be made upon the appropriate form prescribed by the Secretary of the Treasury. Action upon any application or statement may be withheld pending the furnishing of any or all of the information required in such forms or of such additional information as may be deemed necessary by the Secretary of the Treasury, or the agency authorized or directed to act under this part. There shall be attached to the applications, statements, or reports such instruments as may be required by the terms thereof and such further instruments as may be required by the Secretary of the Treasury, or by such agency.

§ 54.6 *General provisions affecting licenses and authorizations.* (a) Licenses issued pursuant to the regulations in this part shall be upon the appropriate form prescribed by the Secretary of the Treasury.

Licenses shall be nontransferable and shall entitle the licensee to acquire, hold, transport, melt or treat, import, export, or earmark gold only in such form and to the extent permitted by, and subject to the conditions prescribed in, the regulations in this part and such licenses.

(b) Revocation or modification of license:¹ Licenses may be modified or revoked at any time in the discretion of the Director of the Mint. In the event that a license is modified or revoked (other than by a modification or revocation of the regulations in this part), the Director of the Mint shall advise the licensee by letter, mailed to the last address of the licensee on file in the Bureau of the Mint. The licensee, upon receipt of such advice, shall forthwith surrender his license as directed. If the license has been modified but not revoked, the Director of the Mint shall thereupon issue or cause to be issued a modified license.

(c) Exclusions: The Director of the Mint may exclude particular persons or classes thereof from the operation of any section of the regulations in this part (except §§ 54.28 to 54.30, inclusive) or licenses issued thereunder or from the privileges therein conferred. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof. Any violation of the provisions of the regulations in this part or any license issued hereunder, shall con-

¹Regulations governing procedures for denying an application for a license, for revoking, suspending or modifying a license, and for excluding any person from the privileges conferred in the regulations in this part are set forth in § 92.31 of this chapter.

stitute, but not by way of limitation, grounds for such exclusion.

(d) Requests for reconsideration: A written request for reconsideration of a denial of an application for a license, of a revocation, suspension, or modification of an existing license, or of an exclusion from the authorizations or privileges conferred in any section of the regulations in this part setting forth in detail the reasons for such request, may be addressed to the Director of the Mint, Treasury Department, Washington 25, D.C. In addition, upon written request, the Director will schedule a hearing in the matter at which time there may be brought to the attention of the Bureau of the Mint any information bearing thereon.

(e) No license issued hereunder shall exempt the licensee from the duty of complying with the legal requirements of any State or Territory or local authority.

(f) No license shall be issued to any person doing business under a name which in the opinion of the Secretary of the Treasury or the designated agency issuing the license, is designed or is likely to induce the belief that gold is purchased, treated, or sold on behalf of the United States or for the purpose of carrying out any policy of the United States.

§ 54.7 *General provisions affecting export licenses.*²
At the time any license to export gold is issued, the

²The regulations in this part shall not be construed as relieving any person from the obligation of compliance with the regula-

Bureau of the Mint, or Federal Reserve bank issuing the same, shall transmit a copy thereof to the collector of customs at the port of export designated in the license. No collector of customs shall permit the export or transportation from the continental United States of gold in any form except upon surrender of a license to export, a copy of which has been received by him from the agency issuing the same (except that licenses on Form TGL-15 (general) covering multiple shipments during a quarterly period are retained by the licensees until the expiration of such period, when they are returned to the Director of the Mint): *Provided, however,* That the export or transportation from the continental United States of fabricated gold may be permitted pursuant to § 54.25 (b) (2) and the export or transportation from the continental United States of gold imported for re-export may be permitted pursuant to §§ 54.32 and 54.33: *And provided further,* That gold held by the Federal Reserve banks under §§ 54.28 to 54.30, inclusive, may be exported for the purposes of such sections without a license. The collector of customs to whom a license to export is surrendered shall cancel such license and return it to the Director of the Mint or to the Mint or the Federal Reserve bank which issued the same. In the event that the shipment is to be made by mail, a copy of the export license shall be sent by the agency is-

tions of the Bureau of Foreign Commerce (formerly the Office of International Trade), (15 CFR Parts 360 to 399), the Bureau of Customs (19 CFR Chapter I), or other laws or regulations relating to the importation or exportation of merchandise, where applicable to imports or exports of gold, or articles containing gold.

suing the same to the postmaster of the post office designated in the application, who will act under the instructions of the Postmaster General in regard thereto.

§ 54.8 *General provisions affecting import licenses.*

No gold in any form imported into the United States shall be permitted to enter until the person importing such gold shall have satisfied the collector of customs at the port of entry that he holds a license authorizing him to import such gold or that such gold may be imported without a license under the provisions of §§ 54.12 to 54.21, inclusive, or §§ 54.28 to 54.30, inclusive. Postmasters receiving packages containing gold will deliver such gold subject to the instructions of the Postmaster General.

§ 54.9 *Forms available.* Any form, the use of which is prescribed in this part, may be obtained at, or on written request to, any United States mint or assay office, or the Director of the Mint, Treasury Department, Washington 25, D. C.

§ 54.10 *Representations by licensees.* Licensees may include in public and private representations or statements the clause "licensed on form TGL..... (here inserting the number of the form of license held by the licensee) pursuant to the regulations issued by the Secretary of the Treasury," but any representation or statement which might induce the belief that the licensee is acting or is especially privileged to act on behalf of or for the United States, or is purchasing, treating, or selling gold for the United States, or in any way dealing in gold for the purpose of car-

rying out any policy of the United States, shall be a violation of the conditions of the license.

(a) *Business names and representations generally.* No person doing business under a name which is designed or is likely to induce the belief that gold is being purchased, treated, or sold on behalf of the United States, or any agency thereof, or for the purpose of carrying out any policy of the United States, or making representations or statements which might induce the belief that such person is acting or is especially privileged to act on behalf of or for the United States, or is purchasing, treating, or selling gold for the United States, or in any way dealing in gold for the purpose of carrying out any policy of the United States, may acquire, hold, transport, melt, or treat, import, export or earmark any gold under authority of §§ 54.12 to 54.20, inclusive, or §§ 54.21 to 54.27, inclusive.

§ 54.11 *Civil and criminal penalties*—(a) *Civil penalties.* Attention is directed to section 4 of the Gold Reserve Act of 1934, which provides:

Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any

such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred (31 U. S. C. 443).

(b) *Criminal punishment.* Attention is also directed to (1) section 5 (b) of the act of October 6, 1917, as amended, which provides in part:

Whoever wilfully violates any of the provisions of of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation (12 U. S. C. 95a (3)).

This section of the act of October 6, 1917, as amended, is applicable to violations of any provisions of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instructions issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to the regulations in this part or otherwise under section 5 (b) of the act of October 6, 1917, as amended.

(2) Section 1001 of the United States Criminal Code, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes

any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both (18 U. S. C. 1001).

Subpart B—Conditions Under Which Gold May Be Acquired and Held, Transported, Melted or Treated, Imported, Exported or Earmarked

§ 54.12 *Conditions under which gold may be acquired, held, melted, etc.* Gold in any form may be acquired, held, transported, melted or treated, imported, exported, or earmarked only to the extent permitted by and subject to the conditions prescribed in the regulations in this part or licenses issued thereunder.

§ 54.13 *Transportation of gold.* Gold may be transported by carriers for persons who are licensed to hold and transport such gold or who are permitted by the regulations in this part to hold and transport gold without a license.

§ 54.14 *Gold situated outside of the United States.* Gold in any form situated outside of the United States may be acquired, transported, melted or treated, or earmarked or held in custody for foreign or domestic account without the necessity of holding a license.

§ 54.15 *Gold situated in the possessions of the United States.* Gold in any form (other than United

States gold coin) situated in places subject to the jurisdiction of the United States beyond the limits of the continental United States may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for the account of persons other than residents of the continental United States, by persons not domiciled in the continental United States: *Provided, however,* That gold may be transported from the continental United States to the possessions of the United States only as authorized by §§54.25, 54.32, 54.33, or 54.34, or licenses issued pursuant thereto.

§ 54.16 *Fabricated gold.* Fabricated gold as defined in § 54.4 may be acquired, held, transported within the United States or imported without the necessity of holding a license therefor. Fabricated gold may be exported only as authorized in § 54.25 or in a license issued pursuant to that section.

§ 54.17 *Metals containing gold.* Metals containing not more than 5 troy ounces of fine gold per short ton may be acquired, held, transported within the United States, or imported without the necessity of holding a license therefor. Such metals may be melted or treated, and exported only to the extent permitted by and subject to the conditions prescribed in or pursuant to §§ 54.21 to 54.27, inclusive.

§ 54.18 *Unmelted scrap gold.* Unmelted scrap gold may be acquired, held, transported within the United States, or imported, in amounts not exceeding at any time 50 fine troy ounces of gold content without the necessity of holding a license therefor. Persons hold-

ing licenses issued pursuant to paragraph (a) of § 54.25, or acquiring, transporting, importing or holding gold pursuant to § 54.21, may not acquire, transport, import or hold any gold under authority of this section.

§ 45.19 *Gold in its natural state.* (a) Gold in its natural state, as defined in § 54.4, may be acquired, transported within the United States, imported, or held in custody for domestic account only, without the necessity of holding a license therefor.

(b) Gold amalgam which results from the addition of mercury to gold in its natural state, recovered from natural deposits in the United States or a place subject to the jurisdiction thereof, may be heated to a temperature sufficient to separate the mercury from the gold (but not to the melting temperature of gold) without a license by the person who recovered the gold from such deposits, or his duly authorized agent or employee. The retort sponge so resulting may be held and transported by such person without a license: *Provided, however,* That no such person may hold at any one time an amount of such retort sponge which exceeds in fine gold content 200 troy ounces. Such retort sponge may be acquired from such persons:

- (1) By the United States;
- (2) By persons holding licenses issued pursuant to paragraph (a) of § 54.25;
- (3) By other persons provided that the aggregate amount of such retort sponge acquired and held by such other persons does not exceed at any one time 200 fine troy ounces of gold content.

(c) Persons acquiring retort sponge under paragraph (b) (3) of this section are authorized to dispose of such retort sponge only to the United States and to persons holding licenses issued pursuant to paragraph (a) of § 54.25.

(d) Except as provided in §§ 54.12 to 54.20, inclusive, and in §§ 54.32 and 54.33, gold in its natural state may be melted or treated or exported only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, §§ 54.21 to 54.27, inclusive.

§ 54.20. *Rare coin.* (a) Gold coin of recognized special value to collectors of rare and unusual coin may be acquired and held, transported within the United States, or imported without the necessity of holding a license therefor. Such coin may be exported, however, only in accordance with the provisions of § 54.25.

(b) Gold coin made prior to April 5, 1933, is considered to be of recognized special value to collectors of rare and unusual coin.

(c) Gold coin made subsequent to April 5, 1933, is presumed not to be of recognized special value to collectors of rare and unusual coin.

Subpart C—Gold for Industrial, Professional, and Artistic Use

§ 54.21 *Fifty ounce exemption for processors.* (a) Subject to the conditions in paragraph (b) of this section, any person regularly engaged in an industry, profession, or art, who requires gold for legitimate,

customary, and ordinary use therein, may, without the necessity of obtaining a Treasury gold license:

(1) Import unmelted scrap gold or acquire gold in any form from any person authorized to hold and dispose of gold in such form and amount under the regulations in this part or a license issued pursuant hereto;

(2) Hold, transport, melt, and treat such gold;

(3) Furnish unmelted scrap gold to the United States, to persons operating pursuant to §§ 54.18 or 54.21, or to the holder of a license issued pursuant to paragraph (a) of § 54.25; and

(4) Furnish melted scrap gold to the United States or to the holder of a license issued pursuant to paragraph (a) of § 54.25 which authorizes the acquisition of such melted scrap gold.

(b) The privileges of paragraph (a) of this section are granted subject to the following conditions:

(1) That the aggregate amount of such gold acquired, held, transported, melted and treated, and imported, does not exceed, at any one time, 50 fine troy ounces of gold content (not including gold which may be acquired, held, etc., without a license under any other section of this part, except § 54.18);

(2) That the aggregate amount of such gold acquired, held, transported, melted and treated, and imported, does not exceed, in any calendar month, 350 fine troy ounces of gold content (not including gold which may be acquired, held, etc., without a license, under any other section of this part, except § 54.18);

(3) That such gold is acquired and held only for processing into fabricated gold, as defined in § 54.4, by such person in the industry, profession, or art in which he is engaged; and

(4) That full and exact records are kept and furnished in compliance with § 54.26.

(c) Persons acquiring, holding, transporting, melting and treating, and importing gold under authority of this section are not authorized:

(1) To consign gold bullion, including semi-processed gold, to other persons for processing except that scrap gold may, for processing and return in semi-processed form, be consigned to the holder of a license issued pursuant to paragraph (a) of § 54.25, which authorizes the acquisition and melting and treating of such gold;

(2) To furnish melted scrap gold to persons operating pursuant to the provisions of this section or § 54.18;

(3) To dispose of gold held under authority of this section otherwise than in the form of fabricated gold or scrap gold.

(d) Persons holding licenses issued pursuant to paragraph (a) of § 54.25 or acquiring, holding, transporting, or importing, gold pursuant to § 54.18 may not acquire, hold, transport, melt or treat, or import, any gold under authority of this section.

§ 54.22 *Licenses required.* Except as permitted in §§ 54.12 to 54.20, inclusive, and § 54.21, gold may be acquired and held, transported, melted or treated,

imported, exported or earmarked for industrial, professional or artistic use only to the extent permitted by licenses issued under § 54.25.

§ 54.23 *Issuance of licenses or general authorizations.* The Director of the Mint may issue or cause to be issued licenses or other authorizations permitting the acquisition and holding, transportation, melting and treating, importing and exporting of gold which the Director is satisfied is required for legitimate and customary use in industry, profession, or art, by persons regularly engaged in the business of furnishing or processing gold for industry, profession, or art, or for sale to the United States.

§ 54.24 *Applications.* Every application for a license under paragraph (a) of § 54.25 shall be made on Form TG-12 (except that applications for export licenses shall be made on Form TG-15) and shall be filed in duplicate with the Director of the Mint, Treasury Department, Washington, D. C. Every applicant for a license under paragraph (a) of § 54.25 shall state in his application whether or not any applications have been filed by or licenses issued to any partnership, association, or corporation in which the applicant has a substantial interest or, if the applicant is a partnership, association, or corporation, by or to a person having a substantial interest in such partnership, association or corporation. The Director of the Mint shall not issue any license to any person if in the judgment of the Director more than one license for the same purpose will be held for the principal use or benefit of the same persons or interests. Any

person licensed under this subpart acquiring a principal interest in any partnership, association or corporation, holding a license under this subpart for this purpose shall immediately so inform the Director of the Mint.

§ 54.25 *Licenses*—(a) *Licenses for the acquisition and holding, transportation, melting and treating, importing and disposition of gold.* (1) Upon receipt of the application and after obtaining such additional information as may be deemed advisable, the Director of the Mint, shall, if satisfied that gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, and that the applicant is qualified in all respects to conduct gold operations in full compliance with the provisions of this part and the provisions of a Treasury gold license, issue or cause to be issued to the applicant a Treasury gold license on the approved form for the kind of industry, profession, art, or business, in which the applicant is engaged.

(2) Licenses issued under this section may authorize the licensee to acquire and hold not to exceed a maximum amount specified therein; to transport such gold, melt or treat it to the extent necessary to meet the requirements of the industry, profession, art or business for which it was acquired and held or otherwise to carry out the purposes for which it is held under license; and to import gold so long as the aggregate amount of all gold held after such importation does not exceed the maximum amount authorized by the license to be held.

(3) Licenses issued under this paragraph do not permit the exportation or transportation from the continental United States of gold in any form. Such exportation or transportation is permitted only to the extent authorized in paragraph (b) of this section or in a separate license issued pursuant to such paragraph.

(b) *Licenses and authorizations for the exporting of gold*—(1) *Semi-processed gold*. Semi-processed gold as defined in §54.4 may be exported or transported from the continental United States only pursuant to a separate export license. Such licenses shall be issued by the Director of the Mint upon application made on Form TG-15 establishing to the satisfaction of the Director that the gold to be exported is semi-processed gold and that the export or transport from the continental United States is for a specific and customary industrial, professional, or artistic use and not for the purpose of using or holding or disposing of such semi-processed gold beyond the limits of the continental United States as, or in lieu of money, or for the value of its gold content.

(2) *Fabricated gold*. Fabricated gold as defined in § 54.4 may be exported or transported from the continental United States without the necessity of obtaining a Treasury gold license: *Provided, however*, That the Bureau of the Census Schedule B statistical classification number of each specific commodity to be exported shall be plainly marked on the outside of the package or container, the shipper's export declaration shall contain a statement that such gold is

fabricated gold as defined in § 54.4 and is being exported pursuant to the authorization contained in this subparagraph, and such additional documentation shall be furnished as may be required by the Bureau of Customs or any other government agency charged with the enforcement of laws relating to the exportation of merchandise from the United States.

(3) *Rare coin.* (i) Rare gold coin, as defined in §54.20, made prior to April 5, 1933, may be exported or transported from the continental United States without the necessity of obtaining a Treasury gold license: *Provided, however,* That the shipper's export declaration shall contain a statement that such coin is rare gold coin and is being exported pursuant to the authorization contained in this subparagraph and such additional documentation shall be furnished as may be requested by the Bureau of Customs or any other government agency charged with the enforcement of laws relating to the exportation of merchandise from the United States.

(ii) Gold coin made subsequent to April 5, 1933, may be exported or transported from the continental United States only under license on Form TGL-11 issued by the Director of the Mint. Application for such a license shall be executed on Form TG-11 and filed with the Director of the Mint, Treasury Department, Washington 25, D. C.

(4) *Other exports of gold.* Export licenses may also be issued upon application made on Form TG-15B in the same manner as prescribed in subparagraph (1) of this paragraph, authorizing the exporta-

tion of gold in any form for refining or processing subject to the condition that the refined or processed gold (or the equivalent in refined or processed gold) be returned to the United States, or subject to such other conditions as the Director may prescribe.

§ 54.26 *Investigations; records; subpoenas.* (a) The Director of the Mint is authorized to make or cause to be made such studies and investigations, to conduct such hearings, and to obtain such information as the Director deems necessary or proper to assist in the consideration of any applications for licenses, or in the administration and enforcement of the acts, the orders, and the regulations in this part.

(b) Every person holding a license issued under paragraph (a) of § 54.25, or acquiring, holding or disposing of gold pursuant to the authorizations in §§ 54.18 and 54.21, shall keep full and accurate records of all his operations and transactions with respect to gold, and such records shall be available for examination by a representative of the Treasury Department until the end of the third calendar year (or if such person's accounts are kept on a fiscal year basis, until the end of the third fiscal year) following such operations or transactions. The records required to be kept by this section shall include the name, address, and Treasury gold license number of each person from whom gold is acquired or to whom gold is delivered, and the amount, date, prescription and purchase or sales price of each such acquisition and delivery, and any other records or papers required to be kept by the terms of a Treasury Department gold li-

cense. If the person from whom gold is acquired, or to whom gold is delivered, does not have a Treasury gold license such records shall show, in lieu of the license number of such person, the section of the regulations in this part pursuant to which such gold was held or acquired by such person. Such records shall also show all costs and expenses entering into the computation of the total domestic value of articles of fabricated or semi-processed gold as defined in §54.4.

(c) The Director of the Mint (or the officers and employees of the Bureau of the Mint specifically designated by the Director) or any department or agency charged with the enforcement of the acts, the orders, or the regulations in this part, may require any person to permit the inspection and copying of records and other documents and the inspection of inventories of gold and to furnish, under oath or affirmation or otherwise, complete information relative to any transaction referred to in the acts, the orders, or the regulations in this part involving gold or articles manufactured from gold. The records which may be required to be furnished shall include any records required to be kept by this section and, to the extent that the production of such information is necessary and appropriate to the enforcement of the provisions of the acts, the orders, and the regulations in this part, or licenses issued thereunder, any other records, documents, reports, books, accounts, invoices, sales lists, sales slips, orders, vouchers, contracts, receipts, bills of lading, correspondence, memoranda, papers and drafts, and copies thereof, either before or

after the completion of the transaction to which such records refer.

(d) The Director of the Mint may administer oaths and affirmations and may, whenever necessary, require any person holding a license under § 54.25 or acquiring, holding or disposing of gold pursuant to the authorizations of §§ 54.18 or 54.21, or any officer, director, or employee of such person, to appear and testify or to appear and produce any of the records specified in paragraph (c) of this section or both, at any designated place.

§ 54.27 *Reports.* Every person holding a license issued pursuant to paragraph (a) of §54.25 shall make reports on the appropriate report form specified in such license for the six months' periods ending on the last days of June and December, respectively, and shall file such reports with the Director of the Mint, Treasury Department, Washington 25, D. C. Reports shall be filed within twenty-five days after the termination of the period for which such reports are made.

Subpart D—Gold for the Purpose of Settling International Balances and for Other Purposes

§ 54.28 *Acquisitions by Federal Reserve banks for purposes of settling international balances, etc.* The Federal Reserve banks may from time to time acquire from the United States by redemption of gold certificates in accordance with section 6 of the Gold Reserve Act of 1934 such amounts of gold bullion as,

in the judgment of the Secretary of the Treasury, are necessary to settle international balances or to maintain the equal purchasing power of every kind of currency of the United States. Such banks may also acquire gold (other than United States gold coin) abroad or from private sources within the United States.

§ 54.29 *Dispositions by Federal Reserve banks.* The gold acquired under § 54.28 may be held, transported, imported, exported, or earmarked for the purposes of settling international balances or maintaining the equal purchasing power of every kind of currency of the United States: *Provided*, That if the gold is not used for such purposes within 6 months from the date of acquisition, it shall (unless the Secretary of the Treasury shall have extended the period within which such gold may be so held) be paid and delivered to the Treasurer of the United States against payment therefor by credits in equivalent amounts in dollars in the accounts authorized under the sixteenth paragraph of section 16 of the Federal Reserve Act, as amended (48 Stat. 339; 12 U. S. C. 467.)

§ 54.30 *Provisions limited to Federal Reserve banks.* The provisions of this subpart shall not be construed to permit any person subject to the jurisdiction of the United States, other than a Federal Reserve bank, to acquire gold for the purposes specified in this subpart or to permit any person to acquire gold from a Federal Reserve bank except to the extent that his license issued under this part specifically so provides.

Subpart E—Gold for Other Purposes Not Inconsistent with the Purposes of the Gold Reserve Act of 1934 and the Act of October 6, 1917, as Amended

§ 54.31 *Licenses required.* Gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked for purposes other than those specified in §§ 54.21 to 54.30, inclusive, not inconsistent with the purposes of the acts only to the extent permitted in §§ 54.12 to 54.20 inclusive, and § 54.32, or under a license issued under §§ 54.33 or 54.34.

§ 54.32 *Gold imported in gold-bearing materials for re-export.* (a) Gold refined (or the equivalent to gold refined) from gold-bearing materials imported into the United States for refining and re-export may be re-exported to the foreign exporter or pursuant to his order, without the necessity of obtaining a Treasury gold export license, subject to the following conditions:

(1) The imported gold-bearing material either (i) was imported into the United States from a foreign resident or a foreign organization, or (ii) was mined by a branch or other office of a United States organization and imported into the United States from such branch or office;

(2) The importer has no right, title, or interest in the gold refined from the imported gold-bearing material other than through its branch or office which is the foreign exporter as provided in subparagraph (1) (i) and (ii) of this paragraph, and the importer

will not participate in the sale of such refined gold or receive any commission in connection with the sale of such refined gold;

(3) The refined gold is to be re-exported to the foreign exporter or, pursuant to his order, to a foreign resident or foreign organization; and

(4) Such gold is imported, acquired, and held, transported, melted and treated, as permitted in §§ 54.12 to 54.20, inclusive, or in accordance with a license issued under § 54.25 and in full compliance with the provisions of paragraph (b) of this section.

(b) *Procedural requirements.* Persons exporting gold pursuant to paragraph (a) of this section shall comply with the following requirements:

(1) *Notation upon entry.* Upon the formal entry into the United States of any gold-bearing materials, the importer shall declare to the collector of customs at the port where the material is formally entered that the importation is made with the intention of exporting the gold refined therefrom to the foreign exporter, or pursuant to his order. The collector shall make on the entry a notation to this effect and forward a copy of the entry to the United States assay office at New York or to the United States mint at San Francisco, whichever is designated by the importer.

(2) *Sampling and assaying.* Promptly upon the receipt of each importation of gold-bearing material at the plant where it is first to be treated, it shall be weighed, sampled, and assayed for the gold content.

A reserve commercial sample shall be retained by such plant for at least 1 year from the date of importation, unless the assay is sooner verified by the Bureau of the Mint.

(3) *Plant records.* The importer shall cause an exact record, covering each importation, to be kept at the plant of first treatment. The records shall show the gross wet weight of the importation, the weight of containers, if any, the net wet weight, the percentage and weight of moisture, the net dry weight, and the gold content shown by the settlement assay. A true copy of such record shall be filed promptly with the assay office in New York or the mint at San Francisco, whichever has been designated to receive a copy of the entry. The plant records herein required to be kept shall be available for examination by a representative of the Treasury Department for at least 1 year after the date of the disposition of such gold.

(4) *Limitations on exports.* The gold refined (or the equivalent to gold refined) from imported gold-bearing materials shall be exported not later than seven months from the date of entry of such gold-bearing materials and shall not exceed the amount of gold shown on the refiner's settlement sheet as having been recovered from the imported gold-bearing material: *Provided*, That, such gold may be exported prior to the procurement of the refiner's settlement sheet in an amount not in excess of 90 percent of a written estimate of the gold content of the gold-bearing material based upon the actual test assay of such material.

(5) *Export declaration and certificate.* The exporter shall state on his export declaration that the shipment is gold refined (or the equivalent to gold refined) from imported gold-bearing materials which is being exported pursuant to the authorization contained in this section, and shall attach to his export declaration a certificate properly executed in duplicate on Form TG-16 and two true copies of the refiner's settlement sheet. In the event that exportation is made prior to procurement of the settlement sheet, duplicate certified copies of the report of the actual test assay of the gold-bearing material, together with a statement showing that an exportation with respect to such material is necessary prior to the time the settlement sheet can be procured, shall be submitted by the exporter with his export declaration and certificate on Form TG-16. The collector of customs shall forward a copy of the certificate on Form TG-16 and a copy of the settlement sheet, or the report of the test assay, to the United States assay office at New York or the United States mint at San Francisco, whichever has been designated to receive a copy of the entry.

§ 54.33 *Gold imported for re-export*³—(a) *Exportation promptly without license.* Gold may be imported and transported for prompt export, and exported without the necessity of holding a license, provided the gold is, in fact, exported promptly and

³Attention is directed to Order No. 29 of the Foreign-Trade Zones Board (17 F. R. 5316; 15 CFR 400.803) which is applicable to gold.

remains under customs custody throughout the period during which it is within the customs limits of the United States. Upon the arrival in the United States of gold imported for re-export pursuant to the provisions of this section, the importer shall declare to the collector of customs at the port of entry that it will be re-exported promptly. The collector of customs shall make a notation of this declaration upon the entry and forward a copy of the entry to the Director of the Mint.

(b) *Exportation pursuant to license.* In the event that the export of any gold imported pursuant to this section is delayed due to the unavailability of facilities for the onward transportation of such gold, the Director of the Mint may, subject to the following provisions, issue licenses on Form TGL-17 authorizing the importation, holding, transportation, and exportation of gold which the Director is satisfied is, in fact, imported for re-export promptly upon the completion of necessary arrangements for the transportation of such gold.

(1) Every application for a license under this section shall be made on form TG-17 and shall be filed with the Director of the Mint.

(2) Upon receipt of the application and after making such investigation of the case as may be deemed advisable, the Director of the Mint, if satisfied that the gold was, in fact, imported for re-export promptly upon the completion of necessary arrangements for the transportation of such gold, shall issue to the applicant a license on form TGL-17.

§ 54.34 *Licenses for other purposes.* The Secretary of the Treasury, with the approval of the President, shall issue licenses authorizing the acquisition, transportation, melting or treating, importing, exporting, or earmarking of gold for purposes other than those specified in §§ 54.21 to 54.30, inclusive, 54.32 and 54.33, which, in the judgment of the Secretary of the Treasury, are not inconsistent with the purposes of the acts, subject to the following provisions:

(a) *Applications.* Every application for a license under this section shall be made on form TG-18 and shall be filed in duplicate with the Federal Reserve bank for the district in which the applicant resides or has his principal place of business. Upon receipt of the application and after making such investigation of the case as it may deem advisable, the Federal Reserve bank shall transmit to the Secretary of the Treasury the original of the application, together with any supplemental information it may deem appropriate. The Federal Reserve bank shall retain the duplicate of the application for its records.

(b) *Licenses.* If the issuance of a license is approved, the Federal Reserve bank which received and transmitted the application will be advised by the Secretary of the Treasury and directed to issue a license on form TGL-18. If a license is denied, the Federal Reserve bank will be so advised and shall immediately notify the applicant. The decision of the Secretary of the Treasury with respect to the granting or denying of a license shall be final. If a license is granted, the Federal Reserve bank shall thereupon note upon

the duplicate of the application therefor, the date of approval and issuance and the amount of gold specified in such license.

(c) *Reports.* Within 7 business days of the date of disposition of the gold acquired or held under a license issued under this section, or within 7 business days of the date of export, if such exportation is authorized, the licensee shall file a report in duplicate on form TGR-18 with the Federal Reserve bank through which the license was issued. Upon receipt of such report, the Federal Reserve bank shall transmit the original thereof to the Secretary of the Treasury, and retain the duplicate for its records.

Subpart F—Purchase of Gold by Mints

§ 54.35 *Purchase by mints.* The mints, subject to the conditions specified in the regulations in this part, particularly § 54.36 to § 54.44, and the general regulations governing the mints, are authorized to purchase:

(a) Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, which shall not have entered into monetary or industrial, professional, or artistic use, including gold contained in deposits of newly mined domestic silver;

(b) Gold contained in deposits of silver eligible for deposit at a mint for return in bar form;

(c) Scrap gold as defined in § 54.4;

(d) Gold refined from sweeps purchased from a United States mint;

(e) Gold (other than United States gold coin) imported into the United States after January 30, 1934;

(f) Gold refined (or the equivalent to gold refined) from imported gold-bearing material; and

(g) Such other gold (other than United States gold coin or gold derived therefrom) as may be authorized from time to time by rulings of the Secretary of the Treasury.

Provided, however, That no gold shall be purchased by any mint under the provisions of this subpart which, in the opinion of the mint, has been held at any time in noncompliance with the acts, the orders, or any regulations, rulings, instructions, or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder.⁴

§ 54.36 *Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, including gold contained in deposits of newly mined domestic silver.* (a) The mints may purchase gold under § 54.35 (a) only if the deposit of such gold is accompanied by a properly executed statement as follows:

⁴Gold which has been so held in noncompliance with section 3 of the act of March 9, 1933, or the Order of the Secretary of the Treasury of December 28, 1933, may, however, be purchased in accordance with the Instructions of the Secretary of the Treasury of January 17, 1934 (§ 53.1 of this chapter, subject to the rights reserved in such Instructions and at the price stated therein.

(1) A statement on form TG-19 shall be filed with each delivery of gold by persons who have recovered such gold by mining or panning in the United States or any place subject to the jurisdiction thereof.

(2) A statement on form TG-20 shall be filed with each delivery of gold by persons who have recovered such gold from gold-bearing materials in the regular course of their business of operating a custom mill, smelter, or refinery.

(3) A statement on form TG-21 together with a statement giving the names of the persons from whom gold was purchased, the amount and description of each lot of gold purchased, the location of the mine or placer deposit from which each lot was taken, and the period within which such gold was taken from the mine or placer deposit, shall be filed with each such delivery of gold by persons who have purchased such gold directly from the persons who have mined or panned such gold.

(b) In addition, the depositors shall show that the gold was acquired, held, melted and treated, and transported by them in accordance with a license issued pursuant to § 54.25 or that such acquisition, holding, melting and treating, and transportation, is permitted under §§ 54.12 to 54.20 inclusive, without the necessity of holding a license.

§ 54.37 *Gold contained in deposits of silver.* Gold contained in deposits of silver, eligible at a mint for return in bar form, may be purchased by the mints: *Provided*, That the gold was not mixed with such silver for the purposes of selling gold to the United

States which was not eligible for purchase by the United States under paragraphs (a), (c), (d), (e), or (f) of § 54.35.

§ 54.38 *Scrap gold.* Deposits of scrap gold must be accompanied by a statement executed on form TG-22. In addition the depositors of such gold shall establish to the satisfaction of the mint that the gold was acquired, held, and transported by them in accordance with the regulations in this part or a license issued pursuant thereto.

§ 54.39 *Gold refined from sweeps purchased from a United States mint.* Gold refined from sweeps purchased from a United States mint shall be purchased only if the deposit of such gold is accompanied by a statement executed on form TG-28.

§ 54.40 *Imported gold.* Except for gold which may be purchased in accordance with the provisions of § 54.41, the mints are authorized to purchase only such gold imported into the United States as has been in customs custody throughout the period in which it shall have been situated within the customs limits of the continental United States, and then only subject to the following provisions:

(a) *Notation upon entry.* Upon formal entry into the United States of any gold intended for sale to a mint under this subpart, the importer shall declare to the collector of customs at the port of entry where the gold is formally entered that the gold is entered for such sale. The collector shall make a notation of this declaration upon the entry and forward a copy to the mint designated by the importer.

(b) *Statement by importer.* Upon the deposit of the gold with the mint designated by the importer, the importer shall file a statement executed in duplicate on form TG-23.

§ 54.41 *Gold refined from imported gold-bearing material.* The mints are authorized to purchase gold refined (or the equivalent to gold refined) from gold-bearing material which has been either imported into the United States pursuant to a license issued under paragraph (a) of § 54.25 for sale of the gold derived therefrom to a designated mint, or imported into the United States under § 54.32 (notwithstanding the declaration made by the importer upon the entry into the United States of such gold-bearing material as required by § 54.32 (b)), whether or not such gold or gold-bearing material has been in customs custody throughout the period it has been in the customs limits of the continental United States, subject to the following provisions:

(a) In the case of gold-bearing material imported pursuant to license issued under paragraph (a) of § 54.25, the importer shall declare to the collector of customs at the port of entry that the gold-bearing material is being imported for sale of the gold refined therefrom to a designated mint; the collector shall make on the entry a notation to this effect and forward a copy thereof to the mint designated by the importer.

(b) In the case of gold-bearing material imported under § 54.32, if the gold refined therefrom is offered to a mint other than the mint at San Francisco or the

assay office at New York, the importer shall have caused the copy of the entry described in § 54.32 (b) to be forwarded to the mint to which he is offering the gold for sale.

(c) Before any gold may be purchased under this section, the requirements of § 54.32 (b) (2) and (3) must be shown to have been complied with: *Provided, however,* That any person importing gold-bearing materials for sale of the gold refined therefrom to a mint other than the mint at San Francisco or the assay office at New York shall have caused the true copy of the record described in § 54.32 (b) (3) to be forwarded to the mint to which he is offering the gold for sale.

(d) Upon presentation of the gold to a mint or assay office for purchase, the importer shall file a statement executed in duplicate on form TG-26, together with two true copies of the settlement sheet covering the gold-bearing material imported.

(e) No gold shall be accepted for purchase under authority of this paragraph unless it is delivered to the mint and all of the terms hereof complied with within seven months from the date of the formal entry into the United States of the gold-bearing material from which it was extracted.

§ 54.42 *Deposits.* Deposits of gold described in § 54.35 and rulings issued thereunder will be received in amounts of not less than 1 troy ounce of fine gold when deposited in the following forms: Nuggets, grains, and dust which are in their native state free from earth and stone, or nearly so, retort sponge,

lumps, coins, bars, kings, buttons, and scrap gold as defined in § 54.44. All deposits containing 800 thousandths or more of base metal shall be rejected. In the case of gold forwarded to a mint by mail or express, a letter of transmittal shall be sent with each package. When there is a material discrepancy between the actual and invoice weights of a deposit, further action in regard to it will be deferred pending communication with the depositor.

§ 54.43 *Rejection of gold by mint.* Deposits of gold which do not conform to the requirements of §§ 54.35 to 54.42, inclusive, or which otherwise are unsuitable for mint treatment shall be rejected and returned to the person delivering the same at his risk and expense. The mints shall not purchase gold under the provisions of this subpart from any person who has failed to comply with the regulations in this part or the terms of a Treasury gold license. Any deposit of gold which has been held in noncompliance with the acts, the orders, or any regulations, rulings, instructions or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder, may be held subject to the penalties provided in § 54.11 or section 3 of the act of March 9, 1933.

§ 54.44 *Purchase price.* The mints shall pay for all gold purchased by them in accordance with this subpart \$35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price

may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

Subpart G—Sale of Gold by Mints

§ 54.51 *Authorization to sell gold.* Each mint is authorized to sell gold to persons holding licenses issued pursuant to § 54.25, or to persons authorized under § 54.21 to acquire such gold for use in industry, profession, or art: *Provided, however,* That except in justified cases, no mint may sell gold to any person in an amount which, in the opinion of such mint, exceeds the amount actually required by such person for a period of 3 months. Prior to the sale of any gold under this subpart, the mint shall require the purchaser to execute and file in duplicate a statement on form TG-24, or, if such purchaser is in the business of furnishing gold for use in industries, professions, and arts, on form TG-25. The mints are authorized to refuse to sell gold in amounts less than 25 ounces, and shall not sell gold under the provisions of this subpart to any person who has failed to comply with the regulations in this part or the terms of his license.

§ 54.52 *Sale Price.* The mints shall charge for all gold sold under this article \$35.00 (plus one-fourth of 1 percent) per troy ounce of fine gold plus the regular mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

Subpart H—Transitory Provisions

§ 54.70 *Legal effect of amendment of regulations.*
This amendment of the Gold Regulations shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil or criminal cause prior to the effective date of this amendment but all such liabilities shall continue and may be enforced as if said amendment had not been made.

Note: The record-keeping and reporting requirements of these regulations have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[Seal]

H. Chapman Rose,
Acting Secretary of the Treasury.

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